

MOSS v. BALLARD
CASE NO. 2:09cv01406

RESPONDENT'S EXHIBIT 20
(CONTINUATION, pp. 1051 - 1200)

Zain - Direct

1051

1 conservation specialist.

2 With a background still relating to the different
3 types of analysis, I received specific training and
4 designation at the CIB in the capacity which I spoke of.
5 I was hired specifically to develop and implement
6 forensic serology techniques for the State Police.

7 Q You examined the blood in this case by
8 in 1979 for scientific testing procedures -- or testing
9 was done?

10 A The methodologies were: One, I would
11 take a staining that would identify ABO type on the
12 stain, which was called the Howard-Martin Absorption
13 Elution technique.

14 Secondly, to identify electrophoretic protein
15 enzymes from blood staining by a method of
16 electrophoresis. Those were, and still are, the routine
17 blood typing techniques which are used, as well as
18 scientific ways.

19 Q At the time of this murder, did you
20 obtain any serology samples for your department?

21 A Well, what was utilized was a PGM
22 subtyping system, which was utilized at the time, as well
23 as other cases in this time frame, and additional blood
24 blocking tests were made routinely, also, such as

Zain -- Direct

1052

1 haptoglobin and geso-typetesting, that were used during
2 this time period also.

3 Q You, yourself, have used these methods?

4 A With the methodology and techniques
5 were used, it not only was refined for these particular
6 blood-typing systems, but there was evolutions occurring
7 in the scientific arena where a variety of blood-typing
8 tests were being utilized that never had been before.

9 For example, the primary blood-typing systems
10 that were utilized in 1976 was one ABO blood-typing,
11 which was used for years. And secondly, a protein enzyme
12 type typing called biregular PGM, or phosphoglucomutase;
13 and also another method of EAP, or erythrocyte acid
14 phosphatase, was used. These are abbreviations for
15 blood-typing systems.

16 So, any additional blood-typings other than those
17 were not routinely used or developed at the State Police
18 lab until after I was hired.

19 Q And you implemented those prior to your
20 testing in this case?

21 A Yes, that's correct.

22 MR. REVERCOMB: May I have a moment, please, your
23 Honor?

24 THE COURT: Sure.

Zain - Direct

1053

1 MR. REVERCOMB: I have nothing further at this
2 time, your Honor.

3

4

CROSS-EXAMINATION

5

6 BY MR. HUFFMAN:

7

8 Q Mr. Zain, you testified that you
9 actually did the analysis that was presented here in this
10 particular case; is that correct?

11 A Yes, sir, that is correct.

12 Q So, how long after these scrapings were
13 obtained was the analysis performed?

14 A Within the next day or so.

15 Q So, the fact that the report is dated
16 in June, that doesn't indicate that's how long it was
17 before the actual analyses were done; is that correct?

18 A That's correct.

19 Q At the time, whenever you performed
20 these analyses, which would have been in late 1979, or
21 in early 1980, it was a multi-system of electrophoresis
22 used by the State Police?

23 A Yes, sir.

24 Q Was that the particular method that was

Zain - Cross

1054

1 utilized in this case?

2 A These systems were run singularly and
3 multi.

4 Q Did you utilize the four-and-one
5 method, which was a derivative of the multi-system
6 approach?

7 A No.

8 Q You didn't use that method?

9 A No, sir. The PGM subtyping system was
10 utilized as a singular system, and that is how it was
11 originally introduced by the people that developed the
12 technique.

13 Q Was the multi-system technique,
14 utilizing that system, which I believe you -- that
15 Drexall had done studies on?

16 MR. REVERCOMB: Your Honor, I'm going to object
17 to this. This should be done in front of a jury. It's
18 like discovery, and it ought to be done in front of a
19 jury. I don't see the purpose of it.

20 MR. HUFFMAN: Judge, the purpose of it is, in
21 1979, the testimony has been that there was a fairly --
22 even though Mr. Zain hasn't said it yet, this method of
23 typing blood was well accepted within the scientific
24 community. I don't know that that's particularly the

Zain - Cross

1055

1 case.

2 In fact, I have a decision from 1988 from the
3 State of New York, as well as one from the State of
4 Michigan, in which it was decided in 1989, which
5 questions this particular method of typing blood. There
6 was some question raised in both of those particular
7 cases as to whether or not there was particular
8 reliability in that.

9 In fact, one of the fellows who apparently is an
10 expert in the field, testified that there was some
11 question as to this method of the typing of blood. In
12 both the New York case and the Michigan case, that formed
13 the basis of a reversal, because there was some question
14 as to whether or not a specific scientific foundation
15 under the Erye case a bit later, established by the
16 Prosecution. I don't think they've identified ---

17 THE COURT: I'll let him testify.

18

19 BY MR. HUFFMAN:

20

21 Q What laboratory controls were utilized
22 whenever you actually did this analysis?

23 A Internal and external quality control
24 standards were used in all testing.

Zain - Cross

1056

1 In reference to the multi-systems, the two points
2 that you raised are, there was a controversy as to time
3 and place, which was totally nullified as to the people,
4 or qualified people, who were actually running the
5 analysis.

6 The particular systems and the qualifications of
7 the systems have been upheld and have no longer been in
8 controversy in any manner.

9 Q How late do you recall the controversy
10 to be? When was it you recall the controversy within the
11 scientific community was resolved?

12 A In the beginning, or at the inception
13 of the technique, that was simply due to the
14 nonfamiliarity of the new system. And also, the main
15 point is that these systems were run individually and
16 separately. The multi-system was used simply in
17 conjunction with, and not as a sole source. So,
18 therefore, the analysis that was reported was done on
19 independent, singular systems which have nothing to do
20 with the multi-system technique.

21 Q So, what you're telling me is that all
22 of the items you identified were done on the singular
23 system?

24 A That's correct.

Zain - Cross

1057

1 Q Were all of the tests repeated by
2 someone else?

3 A The tests were read and looked at by
4 both people working in the area at the time. The
5 scientific method was followed completely.

6 Q Were photographs made of the actual
7 plates?

8 A No. We did not have photographic
9 capabilities in-house at that time.

10 Q So, at this point in time, there is no
11 way to actually review the results of the typing that was
12 done; is that correct?

13 A Other than the report itself, that is
14 correct.

15 Q And the report itself, you think is
16 conclusory as to what was specifically obtained; is that
17 correct?

18 A The results of the tests were reported
19 as they were done, and confirmed.

20 Q And that is the report that was signed
21 off on by Sergeant Murphy; is that correct?

22 A That's correct.

23 Q Were there any documents that were
24 available or were there any kept in 1979 relating to the

Zain - Cross

1058

1 maintenance of the machine that was utilized in the
2 testing?

3 A Maintenance, as far as equipment used
4 in electrophoresis, consisted of a tank and power supply.
5 It either works or it doesn't work.

6 Q What you are telling me is that there
7 were no records kept as to either of the machines that
8 were utilized; is that correct?

9 A What I'm telling you is that it's not
10 really a machine on which records need to be kept. The
11 power supply either works a hundred percent, or it
12 doesn't work at all. The results are either positive or
13 negative. There is no gray tone of interpretation.

14 The PH buffers are commercially bought and
15 standardized by lot number, and everything is
16 standardized and maintained to the specificity of the
17 manufacturer.

18 Q But you all didn't manufacture the
19 machine; is that correct?

20 A No, sir, we did not make the
21 electrophoresis machines.

22 Q And you didn't work on them, either, at
23 that time?

24 A An electrophoresis tank is a plastic

Zain - Cross

1059

1 tank that you put some buffer solutions in, and you place
2 a jello-type slab of substance on it, and put some blood
3 stains in it, and it shoots the power through it to
4 separate out the blood into some specific components.
5 The interpretation of what those components are is
6 reported, and those are compared to standards that are
7 used in every comparison that is made.

8 Q Were there any controls utilized to
9 account for the effects of the crime scene contaminants?

10 A Crime scene contamination on bloods are
11 primarily such that would affect ABO typing, but
12 therefore, controls aren't used at the crime scene, and
13 are utilized on each analysis of ABO typing.

14 Q ABO typing is different than what we're
15 talking about, electrophoresis, is that correct?

16 A That's the only time contamination
17 would interfere in any way, shape or form because of the
18 sensitivity.

19 Q Then you would agree with the Supreme
20 Court opinion from Michigan where they reversed the Court
21 in the case because there weren't sufficient controls for
22 contamination of the crime scene; is that correct?

23 A No, sir. What I'm saying here, was
24 that on protein enzyme analysis, what they are referring

Zain - Cross

1060

1 to is controls which are really standards that are used
2 on every plate for an exact comparison of what you are
3 trying to identify. You do not try to identify unknowns
4 by not having known standards, and I believe what they
5 mentioned is controls as referred to as standards. And
6 those were used on every protein enzyme that was
7 identified.

8 Q Is it not possible that certain enzymes
9 are affected by contaminants, and could cause a false-
10 positive reading?

11 A A false-positive -- there could be an
12 interpretation made, for instance, if sodium chloride is
13 viewed on whole blood which was not found at the crime
14 scene, there could be alterations that would totally
15 destroy or denature a blood typing that may be
16 interpreted incorrectly by a non-experienced individual,
17 whereby the protocol and the proficiency that we used at
18 the State Police crime lab in the mid-'70s through the
19 '80s including now, are of the highest proficiency. And
20 that is why there were proficiency tests that were done
21 in-house, as well as out of State.

22 So, the quality control would be maintained in
23 such instances as criminal cases because of the
24 importance of the standards, the scientific methods, and

Zain - Cross

1061

1 the closest scrutinization of quality control was
2 utilized at the bureau, and still is today.

3 Q And that was based upon your
4 recollection, and not based upon any independent ---

5 A It was based upon what I worked at and
6 what I was in charge of. The protocols that I set forth
7 as the standards to be used, based on what was accepted
8 across the United States in over three hundred sixty-five
9 crime laboratories, as of which now I am in charge of
10 one, they used the same protocols and standards that are
11 accepted, not only by law peer groups, but in the Court
12 systems in the United States.

13 Q Do you recognize Dr. Benjamin Grunbaum
14 as an expert in electrical phoresis?

15 A No, not in the field of
16 electrophoresis.

17 Q What would you recognize him as an
18 expert in?

19 A He was an expert witness for Beckman
20 Industries Instruments.

21 Q He didn't -- Dr. Grunbaum is not the
22 author of a book, of a handbook, for the
23 individualization or analysis for the individualization
24 of blood stains?

1063

1 complied with our own evidentiary requirements to perform
2 a foundation.

3 I don't think, as an expert, that he, himself --
4 I'm not even sure he says that he is. I'm sure that he
5 will say that he's been accepted in the scientific
6 community, but it requires some independent testimony
7 other than him as to an expert to testify in this case.

8 MR. REVERCOMB: Judge, that's simply not true.
9 He cites two opinions from other states. They are States
10 in which the Supreme Court has upheld blood testing in
11 several cases.

12 MR. HUFFMAN: Judge, I might point out that there
13 is a difference between blood testing and ABO typing and
14 blood testing for the purpose of excluding an individual
15 in a paternity case, and attempting to use certain types
16 of blood testing to put an individual in a category in
17 a criminal case.

18 THE COURT: I understand. I'm not sure that I'm
19 grasping -- you're suggesting that he's got to lay a wide
20 foundation for the process itself?

21 MR. HUFFMAN: I think he does. I think the
22 record is that it is required. I think the State, in
23 order to lay the proper foundation, has got to supply
24 evidence other than the expert who is going to testify

Zain - Cross

1062

1 A Professor Grunbaum is in a precarious,
2 and has been, in a situation working for a private
3 company in projecting that company's image and the
4 instrumentation that they sell, which is the way his
5 interpretations assert methodologies and techniques,
6 because they are different than what could be utilized
7 in a particular situation.

8 Q Professor Grunbaum happens to disagree
9 with you and most other lab technicians on the type of
10 electrophoretic testing; doesn't he?

11 A I'm not a lab technician. Secondly,
12 I'm not ---

13 Q I'm not addressing you as a lab
14 technician.

15 A You stated lab technician. I'm just
16 simply saying that Dr. Grunbaum has been perjured on the
17 stand, because of the unreliability of his testimony.

18 Q That's your opinion?

19 A That's my opinion.

20 MR. HUFFMAN: Judge, I have no further questions.

21 THE COURT: So, you're objecting to his being
22 offered?

23 MR. HUFFMAN: I don't question per se, Mr. Zain's
24 qualifications. I don't think that the State has

1 and say that it is acceptable in scientific communities,
2 this method of doing precisely what they're offering
3 evidence for.

4 THE COURT: So, the expert himself can't testify
5 to that?

6 Is there some law to that effect? The last case
7 we had to that effect was that bite mark case that Dr.
8 Sopher did, in which he identified -- he testified about
9 that field of forensic examination and laid a foundation
10 himself.

11 MR. HUFFMAN: I don't know if that was objected
12 to, your Honor.

13 THE COURT: No, as a matter of fact, I don't
14 think it was.

15 MR. HUFFMAN: But that wasn't the precise -- the
16 Michigan case that I referred to is People v. Young,
17 decided in 1985.

18 MS. LUSK: Judge, I know we've got a drug case in
19 West Virginia where the lab, the chemistry expert from
20 the lab, testified to the reliability of the methods
21 which he used in identifying, I believe it was,
22 marijuana. There wasn't any independent expert called
23 in to state that this particular method of identifying
24 controlled substances was reliable in the community. She

1065

1 testified to it herself.

2 THE COURT: What other cases do you have?

3 MR. HUFFMAN: Judge, just note my objection.

4 THE COURT: I'm going to allow it.

5 Do you all want to take a five minute break
6 yourselves?

7

8 WHEREUPON, the Court stood in a recess in the
9 hearing of this case.

10

11 (Back on the Record with the Jury Present)

12

13 THE COURT: Go right ahead.

14 (To the Jurors) He's already been sworn.

15

16 DIRECT EXAMINATION

17

18 BY MR. REVERCOMB:

19

20 Q Would you please state your name, sir?

21 A Fred Salem Zain.

22 Q Mr. Zain, where are you currently
23 employed?

24 A I am employed as the Chief of Physical

Zain - Direct

1066

1 Evidence with the Bayer County Crime Lab in the Court
2 Examiner's Office in San Antonio, Texas.

3 Q Previous to that, where were you
4 employed?

5 A I was employed as a member of the
6 Department of Public Safety here in West Virginia. I was
7 stationed at the Criminal Identification Bureau in South
8 Charleston, and was the Lieutenant in charge of the
9 identification unit which received and examined physical
10 evidence, such as blood, body fluids, hair samples, and
11 such for examination.

12 Q Is that called the serology section?

13 A That's correct.

14 Q In what capacity were you employed
15 there?

16 A I was the Lieutenant in charge of a
17 particular unit, in charge of training and development
18 of that particular unit, from the time I came into the
19 Department of Public Safety until the time I left.

20 Q And how long were you a State Trooper?

21 A For over thirteen years.

22 Q Would you tell the jury and the Court
23 your qualifications?

24 A My formal education is, I have a

Zain - Direct

1067

1 Bachelor of Science degree in Biology, and a minor in
2 Chemistry.

3 I have an Associate Degree in Applied Sciences
4 from Marshall University. Also, I've got a Master's
5 Degree in Biological Sciences from Marshall University.

6 I've done graduate work involved in the field of
7 sciences, both biological and social sciences. I'm also
8 an Associate Professor at the University of Texas, where
9 I teach criminalistics. I'm also a guest lecturer and
10 I continually lecture at a variety of colleges in the San
11 Antonio area, as well as the State of West Virginia.

12 I have spoken at the West Virginia University
13 Medical College routinely, as well as -- I have performed
14 at the inception and development of legal investigation
15 seminars, which are developed by the legal examiner
16 system in the State of West Virginia.

17 Q Go ahead.

18 A My peer group associations -- I am a
19 member of the Southern Association of Forensic
20 Scientists. I am a member of the Canadian Society of
21 Forensic Scientists. I am a member of the American
22 Academy of Forensic Scientists.

23 Also, I hold memberships and work with the
24 International Society of Electrophoresis, the

Zain - Direct

1068

1 International Society of Hemogenetis, the Academy of
2 Criminal Justice Scientists, and the American Society of
3 Blood Banking. I'm also a Certified Peace Officer with
4 the State of Texas, and I'm an advanced instructor for
5 law enforcement in the State of Texas, and am in charge
6 of two training programs, one with the Sheriff's
7 Department in the County in which I am employed, as well
8 as the San Antonio Police Department.

9 I'm also -- have made application for and
10 acceptance to the International Association of
11 Identification and am also a member of the American
12 Association of Crime Laboratory Directors. I think that
13 covers the peer groups.

14 As far as publications, I've published papers
15 specifically regarding electrophoresis analysis and blood
16 typings and genetic marker identification, using multi-
17 systems and single systems in the State of West Virginia
18 for six years, which was a survey of not only case
19 studies, but whole bloods. And I was published with the
20 American Academy, Journal of Sciences.

21 I have written other papers with regard to
22 methodology and techniques used in forensic serology and
23 personal lectures which have been given as far as the
24 collection of evidence at the crime scene and surveys of

Zain - Direct

1069

1 crime scene processing, and even presently I am
2 continuing to give lectures pertaining to physical
3 evidence.

4 I have also been in charge of training programs
5 which were developed with the West Virginia State Police
6 and include the people that are now presently employed,
7 in doing the work and serological techniques at the
8 Police Criminal Identification Bureau.

9 Primarily, that generally sums up my
10 qualifications.

11 Q Have you been trained in the field of
12 DNA testing?

13 A Yes, sir, I've had specific training at
14 the Canadian Society of Forensic Sciences Center in
15 Toronto, Canada. I have also had specialized training
16 with the Connecticut State Police at Westhaven University
17 in New Haven, Connecticut. I also have specific training
18 and instruction with the Analytical and Genetic Testing
19 Center out in Colorado, where I helped put on a DNA
20 workshop for criminal litigators for DNA testing, and
21 for paternity testing, as well as, our crime laboratory
22 does DNA testing and processes criminal and civil cases
23 independently.

24 Q Have you ever testified as an expert in

Zain - Direct

1070

1 the field of forensic serology before?

2 A Yes, sir, I have testified in
3 approximately forty-eight counties in the State of West
4 Virginia and surrounding states, including Florida and
5 Texas, regarding any and all serological techniques, be
6 they basic serology or advanced techniques involving DNA
7 analysis.

8 Q You have testified an expert in DNA
9 analysis?

10 A Yes, sir, I have.

11 Q What are the tests that you use in
12 processing cases in your work as a forensic serologist?

13 A The primary tests are examinations used
14 in serology that are either visual tests and exams or
15 chemical tests. Chemical tests give you an idea of
16 whether something is positive or negative, and you can
17 continue on with that process as far as -- you obtain as
18 much information as possible.

19 For example, all of the methods and techniques
20 that are utilized in forensic today are accepted, not
21 only in forensic scientific community, but in the general
22 scientific community as it relates to forensic evidence
23 or clinical evidence. The development of processes, even
24 as of today, have been developed from clinical

Zain - Direct

1071

1 processing.

2 A lot of the origin of electrophoretic techniques
3 were developed in Europe in the 1940s and '50s, that
4 pertain to paternity testing, that have to do with the
5 biological father of a child, for example. These
6 techniques were utilized and implemented into the
7 forensic community and standardized across the United
8 States. The same thing, right now, is being done.

9 The primary two areas are one, abuse of a
10 microscope for determining an ABO type, because you can
11 visually see it through a microscope, whether it is
12 positive or negative, and whether you are an A, a B, an
13 AB, or an O, from a stain.

14 And second, is to use a method of
15 electrophoresis, which is a long name. It means a very
16 simple process. Electrophoresis, very simply, is a
17 jello-type substance is put on the last plate. You put
18 a portion of the stained item on that jello, then you
19 pass through the jello a current which separates out the
20 particular blood stain or body fluid.

21 Q Like an electrical current?

22 A Yes. That would sort out the blood
23 stain into some components that you can add some coloring
24 agents to and receive the patterns. If you see any

Zain - Direct

1072

1 banding patterns, they may match up or they may not. If
2 they match up, then it's a positive identification. And
3 if it doesn't match up, it's different, and that's
4 exactly how it's reported.

5 For example, if you get three drops of a person's
6 blood and then you add three specific substances, one
7 will react to an A blood type, and one will react to a
8 B blood type, and one will react to an O blood type. The
9 same thing is the method of electrophoresis. You use
10 standards. You use quality control so that you don't
11 misinterpret anything that may be available. And when
12 the results are issued, they are either positive or
13 negative as far as the conclusion of whether they match
14 or not.

15 Q Are these tests accepted within
16 scientific communities?

17 A Yes, sir, they are.

18 MR. REVERCOMB: Your Honor, at this time, I would
19 ask that Mr. Zain be qualified as an expert forensic
20 serologist.

21 THE COURT: Subject to the defendant's -- noting
22 the defendant's objection, he may be permitted to testify
23 at this point.

24 MR. REVERCOMB: Thank you, Judge.

Zain - Direct

1073

1 BY MR. REVERCOMB:

2

3 Q Now, Mr. Zain, I want to call your
4 attention to December 13, 1979, and ask you if you recall
5 being at the scene of a triple murder?

6 A Yes, sir. At that time, I was
7 stationed at headquarters, and as I mentioned previously,
8 I was directed through the Company B to go to a
9 particular residence to process a crime scene.

10 Q Do you remember where that location
11 was?

12 A It was in the St. Albans area. I
13 forget the exact location, but it was a residence of the
14 Reggett family.

15 Q At what time, approximately, did you
16 arrive?

17 A To the best of my recollection, it was
18 after noon, probably around 1:00 o'clock, or so. I know
19 that once I got there, the processing of the crime scene
20 went on through the evening until about dark.

21 Q For what purpose were you called there?

22 A Specifically, I was designated to go to
23 the crime scene, one, to collect any physical evidence
24 that may be available at the scene for testing and

Zain - Direct

1074

1 analysis.

2 Q And in general terms, what do you look
3 for at the crime scene?

4 A My specific job capacity would have
5 been to look for hairs, fibers, and blood stains. And
6 seeing how it was all at the crime scene, the primary
7 physical evidence around and through the house which I
8 inspected was a majority and variety of blood staining.

9 Q Did you find that blood stain at the
10 Reggett home that day?

11 A Yes, sir. There was blood staining in
12 the majority of the rooms of the residence, as well as
13 on the outside of the residence.

14 Q Did you take samples of the blood
15 stains and objects that had blood on them from the scene
16 that day?

17 A Yes, sir. I collected, I believe,
18 seventeen items from the crime scene, myself, personally,
19 as well as I received other items of evidence that were
20 submitted for analysis at the time, from Trooper Smith
21 and Trooper Williams. And also I received other items
22 internally from other people in reference to this
23 particular case.

24 Q Do you have a list of all of the items

Zain - Direct

1075

1 which you took from the scene in 1979?

2 A Yes, sir. I've got a copy of my report
3 that was issued, that you gave me, as well as the items
4 that I reported.

5 MR. REVERCOMB: Your Honor, I would like
6 permission to request Trooper Zain to step down and point
7 on the chart where he took these items and samples.

8 THE COURT: Fine.

9 MR. REVERCOMB: Your Honor, I'm referring
10 Lieutenant Zain to Exhibit 147.

11

12 BY MR. REVERCOMB:

13

14 Q First of all, Mr. Zain, does this
15 Exhibit 147 accurately depict the layout of the house as
16 you found it on December 13, 1979?

17 A Yes, sir, I did a -- it looks like a
18 pretty accurate drawing, or a non-scale drawing which I
19 made at the time, of the crime scene, which would more
20 or less give me a quick orientation of the samples I
21 made. I've got the same format here, where the items are
22 marked, are pretty evident.

23 You've got item number one which is right here
24 (Indicating). It was in this one bedroom area, where

Zain - Direct

1076

1 there were pieces of a knife, a broken knife, laying
2 around this area, is number one.

3 Number two was a sample that I removed from the
4 pool of blood where Vanessa Reggettz was lying, or where
5 she was when I came into the residence.

6 Example number three was a portion of bloody
7 carpet which I removed from this area, which I didn't
8 assume anything at the time, but it was the second larger
9 pool of blood in the home.

10 Q What room was that in?

11 A That was in the front bedroom which is
12 close to the -- right next to the living room.

13 Q And it also was Reggettz' blood?

14 A Number four was blood from a bed in the
15 front bedroom, this area (Indicating), where the little
16 girl was lying, where she was placed.

17 Number five was a pillow case, also from the
18 front bedroom.

19 Number six was the electrical cord which was
20 removed from around Vanessa Reggettz' neck. She was hung
21 up on the door right here (Indicating).

22 Number seven was a curtain that was on the back
23 door. The curtain had slight blood staining present on
24 it.

Zain - Direct

1077

1 Number eight was a sample from the sheet in the
2 kitchen floor. Number eight was right here (Indicating).

3 Number nine was a sample from outside the back
4 door, below the door handle, on this same door, on the
5 outside, below the door handle, there was some blood
6 staining smears. They weren't drops or splatters; it was
7 like somebody had shoved the door. If you have a cut
8 finger, it would leave a smear as you are going out or
9 coming in, one or the other.

10 Number ten -- there was a blood smear on the edge
11 of the sink, which I removed a portion of it.

12 Number eleven is the same, only from the utensil
13 drawer in the kitchen.

14 Number twelve is a pillow case from the bedroom
15 situated right here (Indicating), where the son was.

16 Number thirteen is a sample from the door which
17 was right in this area (Indicating).

18 Number fourteen was a sample of blood from the
19 door area, right here (Indicating).

20 Number fifteen was from a change purse that was
21 on a dresser.

22 Number sixteen was from an item that was located
23 here (Indicating) in the stack of clothes that was piled
24 up right in this area near the closet and the doorway.

Zain - Direct

1078

1 And number seventeen was also in that same
2 locale.

3 Those were the majority of items that I either
4 physically removed the item if it was moveable, or
5 extracted it or took a portion of blood stain that may
6 have been present on any of the items there. There were
7 other items that were blood-stained which I can identify
8 later, but these were the items that I personally
9 removed, taking into my care and custody through the
10 analyses, until the work was done on them.

11 Some of the items, because they were extracted,
12 say, for example, from an item there wasn't a blood stain
13 on, something that could be tangibly removed, I just
14 removed a small portion for use during the analysis. And
15 it's like having a blood stain on a piece of thread.
16 We'd use the thread for analysis and then there isn't any
17 thread left.

18 But some of the items were returned to the
19 investigating officer and some of them were not.

20 Q Okay, you may take your seat now.

21 Before we go on Trooper, or excuse me, Mr. Zain,
22 item seventeen, the jockey shorts -- is that correct?

23 A Yes.

24 Q Where was that found in regard to the

Zain - Direct

1079

1 bodies?

2 A It was underneath the pile of clothes,
3 and I designated that as such in the report. I
4 specifically stated jockey shorts found under pile of
5 clothes in the master bedroom.

6 Q Mr. Zain, I want to now hand you what
7 has been marked for identification purposes as State's
8 Exhibit 108, and ask you if that corresponds to any of
9 the exhibits which you removed from the house on December
10 13, 1979?

11 A Yes, sir. This is the first item which
12 I mentioned. On the outside, it's -- I'll hold it so it
13 won't come through the plastic. On the outside of the
14 bag, the normal procedure is to mark the item, but more
15 specifically, to designate a case number. That way we
16 specifically know where and when the item was picked up,
17 because that's how all items are submitted to the bureau,
18 whether I did the investigation at the crime scene or
19 someone else did.

20 And then, below that is the initials of the
21 person that analyzes the evidence or collects it. And
22 the FSZ is, of course, my initials. The case number for
23 this State's Exhibit 108, which will remain consistent
24 through all of the items, except for supplemental, which

Zain - Direct

1080

1 was 79-2566. That's the official case number that was
2 given to these particular items at the bureau.

3 Q I refer your attention more closely to
4 the piece of knife blade there. Please describe its
5 condition as it appears today.

6 A Except for the coloration since the
7 last time I saw this item of evidence, it remains and
8 appears to be in similar condition as it was the last
9 time I saw it. You can see, actually, on the blood
10 stain, the total mass of blood stains present. There are
11 two little clear places. It might be a little rough for
12 you to see, but right here and right here (Indicating),
13 there's a clear space where there isn't any blood.
14 That's because those are the areas of the knife that I
15 actually removed some of the blood stain from for testing
16 purposes.

17 Q And once you were through with the
18 processing of this, who did you return it to?

19 A Like the majority of the items, they
20 remained in my sole care and custody, and I returned them
21 to Trooper Williams, who was one of the major
22 investigating officers.

23 Q Do you recall when that was?

24 A I believe it was on March 31, 1979, the

Zain - Direct

1081

1 majority of the items were turned over to him.

2 Q March of '79 or March of '80, Mr. Zain?

3 A I'd say March of '80.

4 Q I want to hand you what's been marked
5 for identification purposes as State's Exhibit 35, and
6 ask you if that photograph depicts where that knife was
7 found?

8 A Yes, sir, that's the specific area by
9 photo representation that I pointed out on the crime
10 scene sketch there. The larger portion of the knife is
11 right at the edge of the blood stain, and there are other
12 scattered pieces of the knife which are also around the
13 piece, yes, sir.

14 Q All right. Thank you. I now want to
15 hand you what has been marked for identification purposes
16 as State's Exhibit 110-B.

17 Would you examine that and tell us what it is?

18 A It's a portion of cut cord that I
19 examined, Exhibit 110-B, and my initials are on the cord
20 as to when I received it, and it would have been in
21 another bag with whatever -- other than just being loose.
22 But it also was removed and appears to be in similar
23 condition since the last time I saw it.

24 Q Does that comport with item number six

Zain - Direct

1082

1 on your chart?

2 A Yes, it does.

3 Q This was in your care, custody and
4 control while you were examining it?

5 A Yes, sir.

6 Q Who did you return it to?

7 A I also returned it to Trooper Williams.

8 Q Now, I want to hand you what has been
9 marked for identification purposes as State's Exhibit 115
10 and ask you to look inside that envelope and tell us what
11 that consists of?

12 A It's State's Exhibit 115. It
13 corresponds with my marked item number up here in the
14 corner with the case number C-79-2566, and my initials.
15 The marks are still on the item, the change purse,
16 inside. You can see right in this particular area there
17 is -- you may not be able to see it too good, but that's
18 a hole right there (Indicating), and that's where I
19 removed some of the blood stain that was present.

20 And it appears to be a small drop of blood or so
21 on the change purse, but it appears to be in similar
22 condition which the last time I saw it.

23 Q And do you recall where that was
24 recovered?

Zain - Direct

1083

1 A I believe that was on the dresser in
2 the front bedroom. It also remained in my care and
3 custody until I returned it to Trooper Williams.

4 Q I now hand you what has been marked as
5 State's Exhibit Number 79, and ask you to look at that
6 photograph and see if you can identify the change purse?

7 A Yes, sir. On the dresser, on the left
8 side, right about in this area (Indicating) there appears
9 to be the purse that we're looking at.

10 Q I will now hand you what has been
11 marked for identification purposes as State's Exhibit 109
12 and ask you to take that out, and tell the jury what that
13 is?

14 A First of all, State's Exhibit 109, it
15 was referred to in my report as item number seven, and
16 that was a curtain from the back kitchen door which I
17 spoke of earlier. On the outside of this envelope, you
18 have got the case number which was originally issued.

19 Also, I want to point out so that it won't be
20 confusing, there is another number on there that says FD
21 89-445, also with my initials, and the date, 12/15/89.
22 That was when I had looked at this when the crime
23 occurred and rechecked some of the blood staining for
24 additional technical analysis that was not available ten

Zain - Direct

1084

1 years ago.

2 On the curtain itself, you have a large cutting
3 that was taken in this area right here (Indicating),
4 where there was some blood staining and some smears.
5 This was done specifically for DNA analysis, but there
6 was additional blood testing done here (Indicating)
7 originally, which was reported in this report.

8 Also on the curtain, is the same case number and
9 there were some other cuttings from, like right through
10 here, which I'll stick my finger through to show you.
11 There was blood staining in this area, and also in this
12 area (Indicating).

13 And when I originally pointed out that it appears
14 to be similar in condition to which I recently last saw
15 it, and the original cuttings that were made on it were
16 made by me, even though it was ten years later. And it
17 originally looks to be the same as when I removed it from
18 the residence.

19 Q After your initial examination of this
20 item in 1979, who did you return it to?

21 A It also -- after I was finished and the
22 evidence was picked up, it was picked up by Trooper
23 Williams at the same time as was originally designated,
24 on the 31st of March, 1980.

Zain - Direct

1085

1 Q You say you later received it back; who
2 did you receive it from?

3 A Also Trooper Williams. He sent it to
4 the crime laboratory in Texas, because there was not the
5 availability to do the type of testing in this State.
6 He sent it to us and we tried to do DNA testing on it.
7 There was DNA material present in the blood stain, but
8 the grade or the condition was such that we were unable
9 to get any additional information. It had just been too
10 long since the occurrence, plus it would have probably
11 preserved the evidence in a frozen condition. That would
12 have been the best way to keep it from ten years ago.

13 The technology on DNA testing wasn't even heard
14 of, much less being tried on forensic evidence then. We
15 still thought we would try and see if we could possibly
16 gain some additional information.

17 Q I don't know if I asked you this, but
18 State's Exhibit 115, the change purse, did you also
19 return that to Trooper Williams?

20 A Yes, sir.

21 Q State's Exhibit 63 is a photograph. I
22 would ask you if that depicts the curtain which you just
23 testified to?

24 A Yes, sir. It shows the same areas of

Zain - Direct

1086

1 blood stains, which I stuck my finger through that one
2 place, which is in this area here (Indicating), on the
3 curtain. And that's a pretty good photo-likeness of the
4 item at the house.

5 Q That's the item that was found?

6 A Yes.

7 Q Prior to your processing it?

8 A Yes, that's correct.

9 Q Now, I want to hand you what has been
10 marked for identification purposes as State's Exhibit 41,
11 and ask you what this photograph depicts?

12 A State's Exhibit 41 is the blood
13 staining smear on the door. This is the door between the
14 back bedroom and, I think they call it a family room, if
15 I'm not mistaken. And that would be the sample or item
16 number thirteen which I believe I referred to in my
17 notes. It was a large blood stain which you can see from
18 the photo, near where Mrs. Reggett was found.

19 Q I now hand you what has been marked for
20 identification purposes as State's Exhibits 54 and 55,
21 and ask you to tell the jury what these photographs
22 depict.

23 A Those particular two photographs are
24 the same door area; one is just a little larger than the

Zain - Direct

1087

1 other, but there is blood stains and smears on it, that
2 appears on the edge of this doorway.

3 And if my memory serves me correctly, that would
4 be -- I removed a blood stain from that particular area
5 which was referenced as a sample from the door between
6 the -- what I call the master bedroom and the front door,
7 or the front door area, if I'm not mistaken.

8 That would have been item number fourteen, which
9 I referred to in the picture up there.

10 Q Is that the master bedroom, the front
11 bedroom?

12 A That's correct.

13 Q I now hand you what has been marked for
14 identification purposes as State's Exhibit 46, and ask
15 you what this photograph depicts?

16 A This is the photo, State's Exhibit 46,
17 which is a sample from the kitchen sink area. You can
18 see that there is a reddish color blood stain present on
19 the edge, as well as water staining. This blood stain
20 has been moist or it has been possibly some detergent or
21 whatever may have been intermingled with it, but it's
22 diluted. It isn't just a blood smear, straight-out. And
23 I believe we weren't able to identify it, other than
24 being blood, although it looks to be a whole there.

Zain - Direct

1088

1 That's the sample I removed from the kitchen
2 sink. I believe that was listed as item number ten.

3 I might say that the sample, like I was
4 explaining earlier, the samples that were removed, such
5 as from that particular area, a small portion of it was
6 removed and that was used during the analysis, and the
7 remainder of the blood stain, of course, remained on the
8 scene or whatever the blood was deposited on originally.

9 Q State's Exhibit 51?

10 A This is the drawer in the kitchen that
11 I made reference to. Item number eleven is a sample from
12 the utensil drawer in the kitchen. It's right here in
13 this area. You can see the reddish color stain, and
14 that's on State's Exhibit 51, of that particular item.

15 I also removed a small portion of that stain and
16 it was used during analysis.

17 Q State's Exhibit 57, for identification
18 purposes?

19 A This is the sheet that was lying in the
20 middle, or lying in the walk-through area of the kitchen.
21 It pretty much depicts the accurate position of where the
22 sheet was. There was a couple of things that were strewn
23 about, some spoons or some utensils lying on the sheet.
24 I identified some blood staining which you can actually

Zain - Direct

1089

1 see. You might be able to see a small portion of the
2 blood stain on the sheet right about in this area right
3 here (Indicating).

4 But on State's Exhibit 57, it's what I made
5 reference to as example number, or item number eight.

6 Q State's Exhibit 73?

7 A State's Exhibit 73 is the sample which
8 I removed from the bed spread in this area (Indicating).
9 It was on the bed where one of the children was lying,
10 and that was item number four in my report.

11 Q Is there any other blood visible in
12 this photograph?

13 A Yes, sir.

14 Q What I made reference to was example or
15 item number three in my report, a sample from the carpet
16 area, right in this area (Indicating). That is what I
17 was talking about earlier. That's also on the board up
18 there.

19 Q Finally, I'll refer you to the upper
20 right corner. It's hard to see in the photograph. See
21 if there is any other blood in that photograph.

22 A There is. You can see it by shadow of
23 the pillow on the far side away from the child, in this
24 area right here, there is a blood stain on the pillow,

Zain - Direct

1090

1 and that also, was referred to as a pillow case from the
2 front bedroom, or item number five.

3 Q I now hand you what has been marked for
4 identification purposes as State's Exhibit 5. What does
5 this photograph depict, if you know?

6 A This is an enlargement of Exhibit No.
7 5, which shows the outside back door. The blood staining
8 which I made reference to primarily in the report, is
9 this small portion of the blood which I removed below the
10 handle, right there (Indicating). That's on the outside
11 of the house. When I made reference that I collected it,
12 that was inside and outside of the house, this is what
13 I was referring to. But that's the item which I marked.

14 Item number nine, which I specifically stated was
15 a sample from the outside of the back door, is below the
16 door handle.

17 Q Now, Mr. Zain, I want to hand you what
18 has been marked for identification purposes as State's
19 Exhibit 158, and ask you if you've seen this exhibit
20 before?

21 A Yes, sir, unfortunately. This has got
22 my initials on the outside, with a ballpoint pen. You
23 can hardly see it here (Indicating).

24 These particular items, a pair of scissors, is

Zain - Direct

1091

1 what I removed -- personally removed from Vanessa
2 Reggett's chest at the crime scene, by direction of Dr.
3 Sopher.

4 Q Who did you give this exhibit to at
5 that time?

6 A Well, that exhibit remained in my
7 direct care until I removed a blood sample from the
8 scissors myself, and then it was turned over for printing
9 to the latent print section.

10 Q Do you remember what date that was?

11 A No, sir, not specifically. The blood
12 sample was removed probably that day or the next, and
13 immediately turned over and handled as a latent print
14 item. But because I had removed it from the victim
15 personally, then I just went ahead and retained it to get
16 the blood sample, the biological sample, off the item
17 before it might have been denatured.

18 Q Who did you give it to?

19 A It was given to Corporal Shumate, with
20 the latent department.

21 Q Who is now a Lieutenant?

22 A That's correct.

23 Q I believe you've already testified that
24 you received some items back and that you tried to do

Zain - Direct

1092

1 some DNA testing?

2 A There were several items that were
3 submitted to the crime laboratory, which is an
4 independent crime laboratory in San Antonio, Texas. They
5 were submitted to possibly obtain additional information
6 pertaining to this case that was not available to be done
7 by any crime laboratory ten years ago.

8 What we did was check the blood staining that was
9 available on the items that were submitted. The blood
10 staining was extracted to determine if DNA banding
11 patterns could be identified. There was material
12 present, but it's what was called "low molecular weight"
13 size, which was inappropriate for identification
14 purposes. That material had degraded to the point where
15 no further analysis could be performed on it.

16 Q So, your results of the DNA testing
17 were what?

18 A The results of our banding patterns
19 were negative, or inconclusive. None were obtained.

20 Q I want to call your attention to
21 December 14, 1979. Did you have occasion to see the
22 clothing identified as belonging to Paul Reggett?

23 A Yes, sir, I received a -- on December
24 14, 1979, quite a variety of clothing that I received

Zain - Direct

1093

1 from Trooper Williams. It consisted of -- it would be
2 easier to go down the list here: Two pairs of brown
3 pants, one shirt worn from work -- I'm going to read to
4 you specifically what was submitted -- two pairs of blue
5 jeans, one work glove, one pair of brown suede boots, one
6 blue jean jacket, one pair of white athletic socks, one
7 pair of brown work pants, two pairs of long underwear,
8 one thermal underwear shirt, one white T-shirt, one pair
9 of white jockey shorts, one tan workshirt, one blue
10 sweatshirt, one red bandanna handkerchief, and one blue
11 toboggan.

12 All of these items were submitted as belonging to
13 Paul Reggett, III.

14 Q I also ask you, on that occasion,
15 December 14, 1979, did you receive any other items from
16 Trooper Smith?

17 A Yes, sir. On that same day, I received
18 from Trooper Smith, M. D. Smith, one blood specimen that
19 was from Vanessa Reggett, and also a plastic bag
20 containing the nightgown of Vanessa Reggett, which she
21 had been wearing at the time of the particular incident.

22 Q I call your attention now to December
23 17, 1979 and ask you what evidence pertaining to this
24 case you received at that time?

Zain - Direct

1094

1 A On December 17, 1979, I received a
2 known blood specimen of Paul Eric Reggett, the son, the
3 little boy, and a blood sample of Bernadette Reggett,
4 the little girl. I received both of these items from
5 Terry -- Trooper Williams, on December 17, 1979.

6 Q Of all of the blood work which you
7 received in this case, did you ever return it to the
8 investigating officer?

9 A No, sir. The whole bloods were
10 utilized during analysis and kept for quite a long period
11 of time in refrigeration until they were disposed of, as
12 is normal protocol.

13 Q Mr. Zain, I also want to ask you, or
14 call your attention to December 18, 1979, and ask you if
15 you had occasion to receive any evidence or exhibits in
16 this case from Corporal Shumate?

17 A Yes, sir. On December 18, 1979, I
18 received some items that were also at the crime scene
19 when I was there, that I did not process or physically
20 take them in hand at the time, but we did take caution
21 of the biological presence that was on them. It
22 consisted of a flashlight, a Christmas package that was
23 under the Christmas tree, and also some Christmas package
24 wrappings, which were also around the Christmas tree.

Zain - Direct

1095

1 These items I received from Dave Shumate, of the
2 latent print section.

3 Q Lieutenant Zain, I want to hand you
4 what has been marked for identification purposes as
5 State's Exhibit 155, and ask you if you have seen this
6 exhibit before?

7 A Yes, sir, that's the particular item
8 -- that's Exhibit 55 that was submitted to me by Trooper
9 Williams as being the nightgown of Vanessa Reggett.

10 Q That was submitted by Trooper Williams
11 or Trooper Smith?

12 A It was submitted by Trooper Smith, I'm
13 sorry.

14 Q Who did you return it to?

15 A It also was returned to Trooper
16 Williams on March 31, 1980.

17 Q And did you conduct tests on this item?

18 A Yes, sir. A variety of blood stains on
19 the item were checked, and blood staining origin as to
20 who it was originally from was identified.

21 Q And I want to hand you what has been
22 marked for identification purposes as State's Exhibit
23 107. I'd like you to look at that.

24 A This, also -- I've got it marked on

Zain - Direct

1096

1 here, the case number is in this area (Indicating), and
2 my initials. This box had a glass bowl in it.

3 Q Who did you receive this item from?

4 A That was also received from Dave
5 Shumate at the bureau for identification.

6 Q And who was it returned to?

7 A It was also returned to Trooper
8 Williams.

9 Q And did you conduct tests on that?

10 A Yes, sir. There was a blood stain on
11 the bottom part of the box, that I checked out, and
12 reported.

13 Q State's Exhibit 106?

14 A This is a flashlight that was lying on
15 a chair in the house that Shumate picked up. It's got
16 my initials on the outside rim of the front part here
17 (Indicating), which I marked at the time. That also was
18 returned to Trooper Williams after I received it and
19 tested it for blood staining.

20 Q I now hand you what has been marked for
21 identification purposes as State's Exhibit 114?

22 A There, again, as I pointed out earlier,
23 there is some double numbers here and initials. That's
24 due to it being resubmitted to me for examination. It

Zain - Direct

1097

1 should just contain a variety of what we call Christmas
2 package wrappings, with a variety of holes cut in here.
3 Where the holes are cut, are primarily where the blood
4 staining was identified. You can see there is still some
5 apparent blood staining in this area right here.

6 And also, in this area here, these areas were
7 tested the first time, where I gained the original
8 information. And then also, I utilized the same areas
9 of the blood staining where we tried to do the DNA
10 testing. This is just one of the pieces of paper.

11 Q Are there also blood stains on this
12 piece, too?

13 A Yes, sir. These, like I say, they're
14 getting sort of worn out, but there is blood staining
15 apparent, visible blood staining, in these areas here.
16 You can see the cuttings, the holes in the paper that are
17 small cuttings. That is where blood staining was
18 identified.

19 We got some anhydrant spray from the latent print
20 section. And these all remained in my care, custody and
21 were returned to Williams the first time, then just
22 recently received and returned back to him again.

23 Q Did you receive these from Corporal
24 Shumate?

Zain - Direct

1098

1 A I received them from Shumate, from
2 internal, and then for re-exam. I received them from
3 Trooper Williams and then returned them to him after I
4 was done with them.

5 Q Now, I hand you what has been marked
6 for identification purposes as State's Exhibit 116, and
7 ask you to examine that.

8 A 116-A, which you can tell is a child's
9 item here, that I examined twice. The markings that are
10 made on here now and labeled were areas that I marked in
11 the photos for DNA analysis. But these items and the
12 cuttings from this were made by me for testing purposes.
13 It takes a little bit more blood staining, especially
14 when it gets old, to try to identify DNA patterns. There
15 is a variety of blood stains on this item.

16 Q Was this item also tested in 1979 by
17 you?

18 A Yes, sir, it was.

19 Q And in 1980, who did you receive this
20 from?

21 A I received that January 7, 1980 from
22 Trooper Williams, and I also returned it to him on the
23 same day that I returned the other items.

24 Q On March 31st?

Zain - Direct

1099

1 A March 31, 1980.

2 Q I would hand you what has been marked
3 for identification purposes as State's Exhibit 100, and
4 ask you if you have seen this exhibit before?

5 A Yes, sir, I've got it marked on this
6 piece of plastic here. The case number, my initials, and
7 when we received it. This was one of the items that was
8 examined, the flatware, or kitchenware, a box of
9 stainless flatware. I received this from Shumate on
10 February 6, 1980, and also returned it to Trooper
11 Williams along with the other items on March 31, 1980.

12 Q I would like at this time to hand you
13 what has been marked for identification purposes as
14 State's Exhibit 63, I believe, and ask you to tell us
15 what this -- oh, excuse me, number 64, and tell us what
16 that photograph depicts?

17 A State's Exhibit 64 is a blood staining
18 which, I believe that I was showing you on the paper
19 there a while ago, the larger blood stain that was
20 present at the time we were at the crime scene. That's
21 the way it appeared to us as we were going through the
22 house, looking at particular items, and that is one of
23 the blood stains that was analyzed and reported.

24 Q That was done before you did your

Zain - Direct

1100

1 testing?

2 A That's correct.

3 Q Mr. Zain, I want to ask you if you had
4 occasion on January 2, 1980, to receive the known blood
5 of Paul Reggett, III, the father and husband?

6 A Yes, sir. I received that blood
7 specimen from Mr. Reggett, because I received it from
8 Trooper Williams.

9 I requested that a known blood specimen be
10 obtained from the father, number one, because of the
11 ongoing investigation, and number two, because the
12 samples from the scene that I had removed showed that
13 the blood staining did not originate from anybody at the
14 house at that time, which left the question, because of
15 the freshness of the blood staining throughout the home,
16 and because it would be assumed that because there was
17 only one person bleeding, and that would have been
18 Vanessa Reggett, that when I identified the blood
19 staining on a variety of the items throughout that house,
20 and on the outside of the house, it did not originate
21 from her.

22 Then I suggested that we start obtaining blood
23 samples from any and all people that would have had
24 access to the house, or could possibly have been involved

Zain - Direct

1101

1 in this particular crime, at which time Trooper Williams
2 and Trooper Smith, being the primary investigators in the
3 case, obtained the blood specimen of Mr. Reggett, and
4 testing was done on his blood, which also excluded it
5 from being his blood in the house.

6 Q What are you saying -- that after you
7 received Mr. Reggett's blood, you still had a variety
8 of blood samples that didn't match anybody in the
9 Reggett family?

10 A What I'm saying is, there were a
11 variety of blood stains that I had removed from the
12 house, or identified on items from the crime scene, that
13 could not have originated from Mrs. Reggett or either
14 of the two children. So I requested a blood sample from
15 the father, seeing as how he was the fourth person who
16 had ready access to the house at any time.

17 The blood staining was not identified as being
18 his. He was totally excluded, and there ensued obtaining
19 or trying to find out where the blood came from, because
20 the blood staining was fresh. It was on stuff that
21 hadn't been there that long or could not have lasted that
22 long on items that the blood was deposited on, and it
23 indicated in the investigation that there had been blood
24 staining deposited by another person, other than the

Zain - Direct

1102

1 people that we already knew about.

2 Q Do you have charts for selecting blood
3 characteristics of the family members?

4 A No, sir, I don't. I've just got the
5 report.

6 Q Do you ever make charts?

7 A Sure.

8 Q I'm going to hand you what's been
9 marked State's Exhibits 143, 144, 145, and 146, and ask
10 you to compare the blood on the members of the Reggett
11 family. Would you do that for us? Show the jury?

12 A I can; it's not problem. It might be
13 easier, instead of using a whole lot of these numbers and
14 letters, if I could just put it on the board there.

15 Q That would be fine.

16 A It would be easier for everybody, and
17 simpler, and I won't write anything contrary to what's
18 on this. I just won't write as many things, to make it
19 easier.

20 What I'll do is simply this: I'll mark it, using
21 initials. There might be a conflict of initials, so I'll
22 put mother, father, son, daughter, and use initials from
23 there on.

24 You've got the primary victim from the standpoint

Zain - Direct

1103

1 of a person bleeding, known as the mother. You've got
2 the daughter, designated as "D", and the son as the
3 little boy, and on here, the father, Mr. Reggett -- I
4 originally was going to do this so that you could relate
5 to what I'm talking to you about today.

6 Everybody can associate with an ABO blood type.
7 All of the people in the family were blood type O. One
8 of the other blood typings -- all blood typings are
9 separate and independent of each other -- in other words,
10 the blood type O does not make -- anything else that I
11 talk about is not necessary for any of these other blood
12 typings nor any of the other blood typings necessary
13 because of this particular one here. So, I'm just going
14 to use one blood type.

15 I'm going to show you all why I requested a known
16 blood specimen from Mr. Reggett and why I requested a
17 known blood specimen, even after I analyzed his blood.

18 Another blood characteristic, which is called
19 ESD, that's an abbreviation for extra-esteration-D blood
20 type. They don't change. Everybody in here has got one;
21 they don't change. They are not altered, they are
22 genetically engineered, and they are inherited by what's
23 Mendelian's Laws. You have three basic types of
24 esterates. You have a 1, a 2, and a 2-1; that's how

Zain - Direct

1104

1 they're designated. Just like the blood types in an ABO
2 are A, B, AB, and O.

3 The mother is blood type 1; the daughter, type 1;
4 the son, type 1; and Mr. Reggett was type 1. The
5 majority of the samples from the scene -- for example,
6 the stain on the curtain, the sample from the kitchen
7 drawer, the sample from the Christmas packages -- this
8 is right at Christmastime -- the samples that were taken
9 throughout the house, the doorframes and such, so, we're
10 just going to call them questionable samples. We don't
11 know where they came from. We're just picking them up.

12 Say, two were ABO type O, and they were of the
13 Esterase-D type 2-1. Now, any way you cut it, that blood
14 did not come from any of the people in the house. So,
15 I recommended to the investigators that there was
16 somebody else bleeding at approximately the same time
17 that all of the other blood was being distributed in the
18 house, and they needed to find out who it came from.
19 That's where I left it.

20 From that point on, is when we ensued additional
21 blood samples from a variety of different people that
22 could possibly have been in the house and deposited blood
23 there, or maybe not, I don't know. But that is the
24 simplest form of even showing you that you can -- whoever

Zain - Direct

1105

1 deposited this blood excluded this whole family of
2 leaving the blood in the house. One individual's blood
3 type is very different from another individual's, and can
4 be one hundred percent exclusive that that blood is
5 coming from another individual. The more you try to
6 exclude somebody as depositing blood somewhere, the more
7 you include them as couldn't possibly contributing blood
8 in a certain place.

9 In other words, the harder I tried to say that
10 this blood didn't come from you, the more tests I run to
11 show that it didn't come from you, if it doesn't exclude
12 you, it makes it even that much more apparent that it
13 probably did come from you.

14 That's all the purpose of forensics. It's not to
15 try to catch somebody because you're trying to get all
16 of the blood types. It's really in reverse of trying to
17 exclude somebody as being the possible depositor of the
18 blood stains, no matter what kind of forensics it is.
19 But on these charts, you've got an ABO type, you've got
20 an Esterase-D type, all of these other designations or
21 additional blood characteristics that everybody has.
22 They don't change. They're not altered, and they're not
23 hard to identify. And these typings were not identified
24 in Mr. Reggett's blood, and from Bernadette's, the little

Zain - Direct

1106

1 daughter's, from the father, and from the son.

2 You get a percentage of the population, that
3 these people that the blood typings occur in, not how
4 many people really have it, but they're not based on
5 statistics, they're based on gene frequencies.

6 On a paper that I published in West Virginia,
7 over six to eight years of work was based on a variety
8 of blood samples; fresh blood samples, forensic blood
9 samples -- they always were exactly compared to each
10 other. If I analyze a very small sample size -- in other
11 words, a very small blood stain on that back door that
12 I showed you all, if I can only get one or two or three
13 or four of these blood characteristics, it doesn't mean
14 that blood's different, than if I get all nine of them.
15 What it tells me is, if I only get half this many, I can
16 only say that the blood stain still has some blood types
17 identified on these. I just can't scientifically say
18 that it is as good, because like I say, the more blood
19 typings you get to try to exclude somebody as depositing
20 blood, then you can narrow down the number of people that
21 actually have that whole total amount of blood typings.

22 It's like, of course, to use as an example --
23 approximately forty-five percent of the population are
24 blood type O. Well, that's a pretty good large amount

Zain - Direct

1107

1 of people, but only three percent of the population are
2 AB. So, if you've got somebody who's a type AB, then
3 you've already excluded ninety-seven percent of the
4 population, because that's just how the curve falls.
5 It's genetically inherited, so you get all of these blood
6 types together and you get a certain percentage. And I'm
7 pretty sure they're going to have me testify to what the
8 total combination of all of these blood types are.

9 But the key is that if the blood typings
10 identified from the crime scene would have matched up
11 with Mr. Reggett or the daughter or the son or the
12 mother, it still wouldn't mean that it specifically, one
13 hundred percent, came from that person. But it would say
14 that it would be very highly likely that it did. But
15 because there was not only just one blood type, which is
16 all you need to say that it didn't come from anybody
17 there, there were several blood typings that were
18 different than what is found in the whole family
19 scenario.

20 So, as soon as I identified the one blood typing,
21 it was readily apparent to me that the investigation
22 needed to occur, no matter what may appear on the surface
23 at the time, to find out who was bleeding in the house.

24 It's a part of our job as being a State

Zain - Direct

1108

1 Policeman, to be investigators and to use investigative
2 tools to try to find out as much information about a
3 crime as possible, and this is what warranted us to
4 continue the investigations at a more rapid pace. The
5 longer time goes on after a crime, the more chances there
6 are of losing physical evidence. That's exactly what our
7 department did.

8 Q Mr. Zain, before we leave this subject,
9 I see Paul Reggett's chart there. He's got nine blood
10 typings?

11 A Yes, sir.

12 Q I guess the importance of all of this
13 is that all of those are separate and independent from
14 the others?

15 A That's correct. In other words, I
16 could do a blood typing on you, and I could just type
17 your blood for, say, what's designated at the bottom
18 there, as GC, that stands for group specific component
19 blood type, it's a big word for just blood type. I can
20 identify what your GC is and it doesn't matter what that
21 is compared to what your ABO type is, or any of these
22 others that are on that board. And it's just as
23 important as getting an ABO type. About the only time
24 you work that in is because if you're A positive or B

Zain - Direct

1109

1 negative, or you worry about having kids because of your
2 RH factor, and stuff like that.

3 Well, these other blood typings are not
4 clinically important. In other words, if you have a
5 transfusion or give somebody blood, these other blood
6 typings aren't going to interfere. They're not going to
7 be of any relevant importance from the standpoint
8 clinically, but they are genetically important to
9 forensic applications, and they are genetically important
10 to population studies. They are sort of an added plus
11 to find out an internal characterization of an
12 individual. It's just like having brown hair or blue
13 eyes, or long arms or short fingers, and things along
14 this line. That gives you a physical makeup of what an
15 individual looks like.

16 For blood characteristics, when used, and the way
17 they're used forensically, and in population studies by
18 anthropologists, give you an internal makeup of
19 individuals of a certain area, and the study I did was
20 on a thousand people and a thousand cases in the State
21 of West Virginia. It shows that the population was
22 primarily ninety-six percent caucasian and three percent
23 black. And it confirmed the national gene frequencies
24 that were being used scientifically in forensics and

Zain - Direct

1110

1 otherwise, of what was used in the crime laboratory at
2 the time, and is now, the gene frequencies to give us an
3 idea of what type of population or how many people, say,
4 should have a certain set of blood typings are right in
5 sync with what is across the United States.

6 Q Before going any further, was any blood
7 found in the house that was consistent with the blood of
8 Paul Reggett, III, the father?

9 A There was no blood stain in the
10 residence or on any item that identified -- or that I
11 tested that had any blood staining the same as Mr.
12 Reggett's or anybody else, other than Mrs. Reggett, and
13 the blood samples that I took from Mr. Moss.

14 Q And you've also testified that you had
15 clothing submitted by Trooper Williams in December of
16 1979 that was identified as belonging to Paul Reggett.
17 Was any blood found on any of those items?

18 A No, sir, there was no blood that could
19 be identified visually or chemically.

20 Q I want to call your attention to April
21 22, 1980, and ask you if you had occasion on that date
22 to see the known blood of the defendant, John Moss?

23 A Yes, sir.

24 Q Who did you receive that from?

Zain - Direct

1111

1 A I received a known blood sample of Mr.
2 Moss's blood from Terry Williams on April 22, 1980.

3 Q And you compared his blood to the blood
4 of the Reggettz family?

5 A It was tested, just like the other
6 blood samples and stains that I had done. The blood
7 typings which were identified were the same blood typings
8 which I supplied from the samples from the scene.

9 Q One thing I think you testified about,
10 one inconclusive marking can exclude a person?

11 A That's correct. If I were to check Mr.
12 Moss's blood or that of anybody else and find that he is
13 a blood type B, then there is no way he could have
14 deposited the blood at the scene.

15 If he was an esterase type 1, there is no way
16 that the blood could have come from him.

17 If he was any other blood typing than what I
18 identified or what he is, it would have excluded him from
19 being the depositor of the blood stain, at that place or
20 anywhere else. But it didn't.

21 Q Was the blood identified consistent
22 with Vanessa Reggettz's blood found anywhere at the
23 scene?

24 A Yes, sir. I can tell you very quickly,

Zain - Direct

1112

1 I hope, on the items that I removed from the scene.
2 Personally, all of the items -- I'll just go through
3 these by item numbers, because there are right there on
4 that board and you've talked about them several times
5 already.

6 But items one through five, which is from the
7 pieces of the knife, samples from the doorways, the
8 carpet, the bedspread, and the pillowcase ---

9 Q Which pillowcase is that?

10 A That's the pillowcase from the front
11 bedroom.

12 Also, number six, the electrical cord which was
13 removed from around her neck. The sample from the sheet
14 on the kitchen floor, which had a couple drops of blood.
15 A sample from outside the back door, below the door
16 handle, which is sort of unusual.

17 Q That was consistent with Vanessa
18 Reggett's blood?

19 A That's right. I'm going to include
20 everything that was on my sample that was hers.

21 There was a sample from the door between the
22 bedrooms, and the living room.

23 Q The living room or the TV room?

24 A The TV room.

Zain - Direct

1113

1 Q Is that the door at which Vanessa was
2 found?

3 A That's correct. And also, the medium
4 white T-shirt was found under a pile of clothes in the
5 master bedroom, and was the same as her blood.

6 Q It was underneath some clothes?

7 A Right. And then, of course, the known
8 blood sample on her nightgown, which we've already talked
9 about. All of those samples that I referred to had blood
10 staining on them and the blood types which were
11 identified were the same as hers.

12 The other items where there was human blood
13 identified, and the identified characteristics -- or they
14 were identified as being the same as Mr. Moss's, and that
15 was from the sample from the door between the master
16 bedroom, or what I called the master bedroom, the front
17 bedroom, and the front door.

18 The change purse, a sample from the utensil
19 drawer in the kitchen, the pillowcase from the bedroom
20 beside the bath, the curtain from the back door, and
21 you've got the flashlight, the Christmas package wrapping
22 -- those items, if I'm not mistaken there might have been
23 another one, but all of those, for sure, had blood
24 staining on them of the blood type the same as Mr. Moss,

Zain - Direct

1114

1 and nobody else in the family.

2 Q Mr. Zain, what is meant by the term
3 "consistent with blood samples consistent with a member
4 of the family?" Does that mean that it is his blood?

5 A Consistent or not consistent is a way
6 of reporting where you're not scientifically, at least
7 at that time, you could not say the blood specifically
8 one hundred percent came from an individual, unless you
9 were there at the time the blood was deposited, or at
10 least with a certainty that the type of blood, and the
11 number of times you eliminated the vast majority of
12 people -- the policy was, which I set forth, was to
13 assure that reports were consistent or not consistent.

14 Q What does not consistent mean?

15 A Not consistent means that you one
16 hundred percent exclude someone as being the possible
17 depositor of blood or other body fluids.

18 Consistent means that all of the blood typings,
19 whether you have one or whether you have nine, are
20 consistent with what you are comparing to, and the person
21 cannot be eliminated at all from the positive, depositing
22 the blood or body fluids, if the same genetic markers are
23 identified from item to the next, which make it
24 consistent with each other.

Zain - Direct

1115

1 Q I have a hypothetical for you, Mr.
2 Zain.

3 Suppose an item, possibly a small amount of blood
4 of person "X" and a large amount of person "Y", you found
5 in a pool consistent with person "Y", in your testimony
6 of what you would expect to find?

7 A I think I've used in this Court the
8 analogy -- if you take a cup of water and throw it in the
9 ocean, you are not going to be able to identify the cup
10 of water. That's about as simple as you can say it,
11 because you've got such a small portion of blood in a
12 large portion of another blood, then you're not going to
13 be able to identify it.

14 Q I want to again refer your attention to
15 State's Exhibit 108, and I'll ask you to look at the
16 biggest piece of the knife blade. I believe you've
17 identified that as being a blood stain?

18 A Yes, sir.

19 Q Whose blood was that consistent with?

20 A That's the same blood type as Mr. and
21 Mrs. Reggett.

22 Q If she had cut someone with that knife,
23 would you expect to find the other person's blood on it?

24 A Well, it depends upon a variety of

Zain - Direct

1116

1 situations, but it's not really that complicated.

2 If you have one, you just cut somebody or you
3 just cut at somebody and even though you may cut them,
4 you're not going to have blood on that item which you cut
5 them with. You have to have repeated exposure to an
6 item, at least more than once, before you can have blood
7 left on an item, particularly with a knife.

8 When you have a knife and it's just a cut
9 through, it's primarily cutting through a variety of
10 tissues, and the skin -- the skin is pretty tough. But
11 when you cut through the first time, you've got to cause
12 some bleeding to occur before blood can be left on
13 something.

14 If you stab yourself when you're cutting an apple
15 or something like that with a pocket knife, or when
16 you're working in the kitchen, and you cut your hand, you
17 cut your hand, but after you know that you've cut
18 yourself is when you start bleeding, because there is no
19 blood on the item that you cut yourself with.

20 Now, if you lay a knife down where you've got
21 someone bleeding on it, then of course you're going to
22 have blood deposited on it.

23 Q I believe you've already testified that
24 the largest piece of that knife was found in a pool

Zain - Direct

1117

1 consistent with Vanessa Reggett's blood?

2 A Yes, that's true. And it is showed by
3 the photograph. But even if, for example, this was used
4 to cut somebody, with the amount of blood that is present
5 on here, and from the area that I assembled from, you're
6 only going to identify one set or combination of blood
7 typings. And even if you had a fifty-fifty mixture, just
8 keeping it real simple, adding one person's blood to
9 another person's blood and you mix them up, you put them
10 on something, then by running the variety of blood
11 typings which were run, we'd be able to differentiate as
12 to the blood typings that were identified, no doubt.

13 Q Mr. Zain, I'm going to have you what
14 has been marked as State's Exhibit 152 for
15 identification, and ask you to tell us what that is?

16 A It's a card that just simply says the
17 blood typings or blood characteristics that were
18 identified from Mr. Moss's blood sample, which is
19 depicted -- his blood type is O. I'll put that on the
20 board.

21 These other characteristics are abbreviated.
22 They are protein enzyme-type blood characteristics. The
23 PGM is 1-plus, 1-minus. There are ten blood
24 characteristics in a PGM blood typing system, just like

Zain - Direct

1118

1 there is four in the ABO blood typing system. ESD was
2 2-1, GLO-1 was type 2. The EAP type was a BA. The AK
3 type was a 1. ADA type was a 1. The HP type was 2-1,
4 and the GC type was a 1. These are the blood typings
5 which I identified from the known blood sample. These
6 typings were compared to the blood typings which were
7 identified from the stains present at the crime scene
8 which I mentioned earlier.

9 A variety of the stains, I was able to identify
10 a majority of the blood characteristics. All of them,
11 for comparison purposes, but on some of them, I was only
12 able to identify -- which is quite a vast amount in
13 itself -- let's say, seven out of nine. That's simply
14 because for these two particular blood typing systems
15 that are run individually and separately, you need a
16 fairly large portion of the blood stain. And I think you
17 all have seen what I tried to show you all on a variety
18 of the items, either by a picture or by the items
19 themselves.

20 A lot of samples that were present at the crime
21 scene, there wasn't a whole heck of a lot of blood --
22 just a smear of blood here, a drop of blood there. And
23 you have to have a certain amount of blood, even when it
24 is in the best condition, to be able to identify any

1119

Zain - Direct

1 information from it at all.

2 So, it doesn't make them different from each
3 other; it just makes them -- we got more information from
4 some blood stains than we did from others.

5 But the bottom line is, they still could not
6 exclude Mr. Moss as being the possible contributor of the
7 blood stains. And on the other hand it definitely
8 excluded anyone else in that family from having deposited
9 the blood at the crime scene.

10 Q Mr. Zain, I want to go through each of
11 these items one-by-one, starting first with the change
12 purse. That's State's Exhibit 115.

13 A Yes, sir.

14 Q How many genetic markers were you able
15 to identify in your analysis of that exhibit?

16 A This is going to take a little time,
17 going down through these, from the items per se.

18 Q How about this: Only on what's been
19 marked for identification purposes, as State's Exhibit
20 134?

21 A Okay. These are my item numbers from
22 the case, correct?

23 Q Yes.

24 A Okay.

Zain -- Direct

1120

1 Q You identified it on the change purse;
2 is that correct?

3 A Right.

4 Q Item No. 15, the change purse from the
5 dresser -- I identified seven blood characteristics from
6 the blood staining I showed you. The blood staining
7 identified on there eliminated ninety-nine percent of the
8 population.

9 Q Is that what is meant by one person in
10 a thousand?

11 A It's ninety-nine point nine percent of
12 the population, so say, one in a thousand people could
13 have a combination of blood types that are identified
14 here.

15 Q Does John Moss have that combination?

16 A Yes, sir, he does.

17 Q I hand you now what has been marked for
18 identification purposes as State's Exhibit 136. I
19 believe that represents the stain that you took from the
20 utensil drawer?

21 A Yes, sir. There, again, the same seven
22 blood characteristics were identified. And I want to
23 point out from the door, there was a smear of a blood
24 stain; there wasn't a whole lot. And we utilized -- I

Zain - Direct

1121

1 tested to get the information that I could readily obtain
2 from the stain without destroying it.

3 These seven blood characteristics were identified
4 as the same ones as before that had occurred, and it
5 eliminated ninety-nine point nine percent of the general
6 population.

7 Q And John Moss has those same blood
8 characteristics?

9 A Yes, sir, that's correct.

10 Q Now, I hand you what has been marked
11 for identification purposes as State's Exhibit 138, and
12 ask you what that corresponds to?

13 A The same blood characteristics, again,
14 were identified, which eliminated ninety-nine point nine
15 percent of the population.

16 Item No. 14 is what I designated as between the
17 front bedroom, or master bedroom as I've been calling it,
18 and the front door, that was the entrance to the home,
19 into the bedroom. But it did also have the same blood
20 type as John Moss.

21 Q You removed that blood stain sample
22 from that door?

23 A Yes.

24 Q Now, I hand you what has been marked

Zain - Direct

1122

1 for identification purposes as State's Exhibit 139.

2 A 139 also, as Item No. 12 in my report,
3 is the pillowcase from the bedroom beside the bath. It
4 has the same blood typings as Mr. Moss. It occurs in one
5 person in a thousand. That eliminates ninety-nine point
6 nine percent of the blood typings, as report earlier.

7 Q Although you don't have a chart for it,
8 I believe you also found blood on the flashlight?

9 A Correct.

10 Q Is that State's 106?

11 A Right. The blood typings and smears
12 that were on the flashlight were identified as being the
13 same blood type as on these previous items, and it occurs
14 in approximately the same percentage, ninety-nine point
15 nine, and due to the amount of the sample that was
16 present on the particular item.

17 Q Now, I hand you what has been marked
18 for identification purposes as State's Exhibit 137.

19 A I mentioned earlier about the curtain
20 from the back door. You all have seen it. I have showed
21 you where the blood staining was present on the curtain.
22 You can see that there was a fairly large amount of blood
23 staining present at the time that it was removed from the
24 crime scene, and it was readily available to see the

Zain - Direct

1123

1 amount of staining still present on it.

2 I was able to obtain nine blood characteristics.
3 The combination of these blood types occurs probably in
4 about three people in ten thousand, who would have the
5 same combination of blood characteristics as that which
6 are identified. These are the same blood typings that
7 Mr. Moss has.

8 Q That's three in ten thousand people?

9 A Yes.

10 Q What percentage of the population does
11 that exclude?

12 A Because of the gene frequency in
13 occurrence, it eliminates ninety-nine point ninety-nine
14 -- seven percent of the population.

15 Q Ninety-nine point ninety-seven percent
16 of the population?

17 A That's correct.

18 Q I will now hand you what has been
19 marked as State's Exhibit 135.

20 A This is also -- we had a large amount
21 of stain, which I have shown you. We've talked about it
22 previously -- the Christmas package.

23 Also, the same number and types of
24 characteristics were identified, as I just stated, from

Zain - Direct

1124

1 the curtain. The same package -- percentage and the same
2 blood typings as Mr. Moss, and that occurred -- ninety-
3 nine point ninety-seven percent had been eliminated as
4 being possible contributors of the blood.

5 Q And that's the bowl box exhibit that
6 you identified?

7 A That's correct.

8 Q And State's Exhibit 140 ---

9 A The wrapping paper which I showed you
10 earlier -- there is still some blood staining present on
11 the paper. It's the same blood characteristics which
12 have been identified, the same ones as Mr. Moss's, which
13 occur in the same percentage, and eliminated ninety-nine
14 point ninety-seven percent of the general population.

15 Q Now, I hand you what has been marked as
16 State's Exhibit 141.

17 A Okay. On the clothing of Bernadette,
18 the daughter, you've got nine blood characteristics
19 identified, the same blood typings as Mr. Moss's, and it
20 eliminated ninety-nine point ninety-seven percent of the
21 population, the same blood typing we previously talked
22 about.

23 Q Does that chart represent what you
24 found on Exhibit 189?

Zain - Direct

1125

1 A Yes, sir, that's correct.

2 MR. REVERCOMB: May I have a moment, your Honor?

3 THE COURT: Yes.

4

5 (Back on the Record)

6

7 MR. REVERCOMB: I believe that's all I have.

8

9 CROSS-EXAMINATION

10

11 BY MR. HUFFMAN:

12

13 Q Mr. Zain, I think you've already
14 testified on direct examination as to why you use the
15 term consistent with; is that correct?

16 A Yes, sir. I believe so.

17 Q That's because, based on this type of
18 testing which was done in 1979, you were unable to
19 specifically say that this specific sample which you
20 reviewed came from a particular person; is that correct?

21 A Yes, sir, it is.

22 Q And I think that you've already
23 indicated that these tests were actually tests of
24 exclusion; that's what they are generally referred to.

Zain - Cross

1126

1 Is that correct?

2 A Yes, sir.

3 Q Now, the statistics that you used here
4 for purposes of your analysis, three in ten thousand, one
5 in one thousand -- where did those come from?

6 A First of all, they are not statistics.
7 They are gene frequencies.

8 Q Oh, okay. Where did they come from?

9 A Gene frequencies are what can be
10 genetically inherited in a given population. The
11 population statistics, that you are calling statistics,
12 are gene frequencies that are used here, are what is
13 being used in a cross-section of national gene
14 frequencies at this time and place.

15 Q Who compiled those statistics, or the
16 gene frequency numbers, which you used?

17 A The primary information was done
18 through the FBI facilities, the major crime laboratory,
19 in the United States.

20 Also, there was work done by Dr. George
21 Sensabaugh at the University of California in Berkeley.
22 And also there were anthropological studies done on a
23 wide variety of populations, which are available, as well
24 as the major gene frequencies which were used at the time

Zain - Cross

1127

1 of this report, was from the -- is from Scotland Yard.

2 The Metropolitan Police Department of Scotland
3 Yard, which is pretty much a closed pattern of what types
4 of population we have in West Virginia.

5 Q Are you familiar with the West Virginia
6 Blue Book?

7 A Yes, sir.

8 Q In fact, I think your name is in here;
9 isn't it?

10 A Probably in a couple of them.

11 Q Let me let you take a look at the Blue
12 Book that I've got and we'll note -- we'll let you tell
13 us for the record what that represents.

14 A This was issued in 1979, probably for
15 1978.

16 Q I've got a couple of tabs marked there
17 beside -- the first one, you don't need to worry about,
18 but if you will turn to this tab right there
19 (Indicating).

20 MR. REVERCOMB: Your Honor, may we see that book
21 before he shows it?

22 THE COURT: All right.

23

24 WHEREUPON, Mr. Revercomb was shown the reference.

Zain - Cross

1128

1 BY MR. HUFFMAN:

2

3 Q Let me hand you this Blue Book back,
4 Mr. Zain. Where I've got the tab marked, I believe, has
5 information in there about Kanawha County; is that
6 correct?

7 A Yes, sir, that's correct.

8 Q Does it show there on the page, close
9 to where my tab is, what the population was reported to
10 be in Kanawha County at that time?

11 A Yes, sir, it's got population, 1970,
12 229195.

13 Q All right. Let me turn to the other
14 tab and you tell me what county this is for? Can you
15 tell where I've got the tab there?

16 A Let's see. Are you referring to Putnam
17 County?

18 Q Putnam. What's the population shown in
19 the Blue Book for Putnam County that year?

20 A Population, time period 1970, twenty-
21 seven thousand six hundred twenty-five.

22 Q Okay. Now, if you were to take the
23 three in ten thousand figure that is on the report here
24 and were to figure that into utilizing the population in

Zain - Cross

1129

1 Kanawha County, according to the Blue Book, do you know
2 what figure that would give us, based on a population in
3 Kanawha County as reported, in terms of the number of
4 people that you expect to see who would fall into this
5 category?

6 A I think the map would probably call for
7 what -- three hundred thousand. I mean, I want you to
8 use which ever ---

9 Q Let me tell you what I came up with and
10 you tell me if that sounds right.

11 A Okay.

12 Q I think this is right, because I did it
13 on my calculator. Based upon a population in Kanawha
14 County of two hundred twenty-nine five-oh-five, I came
15 up with a figure for the three in ten thousand formula
16 of three six five; is that right?

17 A Yes.

18 Q So, if, then, we were to assume that
19 these characteristics would occur in three in ten
20 thousand people, could we then assume that there were
21 approximately sixty-eight point eight-five people in
22 Kanawha County who had these genetic markers for any
23 particular period; would that be right?

24 A As far as possible, or probable,

Zain - Cross

1130

1 individuals that could have the same blood typings, that
2 is correct.

3 Q And on the one and one thousand
4 figures, if we were to do that same type of calculation,
5 and again my calculator tells me, assuming it's correct,
6 that the number for Kanawha County, again, based on the
7 same population, would be six hundred ninety-four point
8 two-four. Does that sound about right?

9 A That sounds correct.

10 Q So, we're talking about six hundred and
11 ninety-four point two-four people that would apply to?

12 A Correct; who could possibly have the
13 combination of blood types.

14 Q Would you come down for a minute. I
15 want to ask you some questions about the crime scene
16 here.

17 Item 1, which Mr. Revercomb asked you about, is
18 the change purse. Where on there, on the change purse,
19 does it appear?

20 A Which item?

21 Q Item No. 1, the change purse.

22 A That's the piece of a knife, right
23 here.

24 Q No, I'm sorry. I'm going through the

Zain - Cross

1131

1 last list of things that Mr. Revercomb gave you, not
2 specifically the item.

3 Let me ask about the specific item, or this
4 change purse.

5 A The change purse was my numbered item
6 15. It was found on the dresser.

7 Q And that's the one in one thousand.
8 Let's point out a mistake my calculator made. Let's
9 start again.

10 One in one thousand would not be six hundred
11 ninety-four people, but would be two hundred twenty-nine
12 people; is that correct?

13 A It's your calculator. You've got to
14 remember, I was agreeing with your calculator.

15 Q I'm going to agree with her
16 calculations; two-hundred-nine.

17 The change purse has characteristics which would
18 put it in the one in one thousand category; is that
19 correct?

20 A Yes, sir, that's the item on the
21 dresser.

22 Q So, we're talking about two hundred and
23 twenty-nine people; is that correct?

24 A Yes, sir.

Zain - Cross

1132

1 Q Would you stick that on there where the
2 change purse was?

3 A All right.

4 Q The next item was the utensil drawer.
5 Would you show us where that is?

6 A That's the drawer in the kitchen, which
7 would be right here (Indicating).

8 Q That's also in the one in one thousand
9 category; is that correct?

10 A Yes.

11 Q So, I'll give you a two-twenty-nine to
12 put on there.

13 The next item is the door between the master
14 bedroom and the living room. Would you show the jury
15 where that is?

16 A This is Item No. 14.

17 Q I've got it marked also as the one in
18 one thousand category; is that correct?

19 A Yes, sir.

20 Q Let me give you a sticker for that.

21 Okay. The next item I have is a pillowcase from
22 the front bedroom -- I'm sorry, it would have been the
23 other pillow case.

24 And that item also was in the one in one thousand

Zain - Cross

1133

1 category; is that correct?

2 A I believe so.

3 Q Let me give you a sticker for that one.

4 Now, the next item I have is the flashlight which
5 was in the chair, I believe, in the TV room; is that
6 correct?

7 A Yes, sir.

8 Q That was also in the one in one
9 thousand category, which was two hundred twenty-nine
10 people; is that correct?

11 A Right.

12 Q And now the next item which was removed
13 from the back door -- since my figure was sixty-eight
14 point eight-five, I could round off to sixty-nine, but
15 I'll say sixty-eight. That item was in the three in ten
16 thousand category; right?

17 A Yes.

18 Q Now, the Christmas package and wrapping
19 paper was put in the same area; is that correct?

20 A Yes.

21 Q And the paper appears to be paper that
22 came from that same package, which was also tested; is
23 that correct?

24 A That's correct.

Zain - Cross

1134

1 Q And that's also in the three in ten
2 thousand category, which would give us sixty-eight
3 people; is that correct?

4 A That's correct.

5 Q And the final item that was tested was
6 clothing of Bernadette, and it's also in the three in ten
7 thousand category. Where was it located?

8 A The bedroom of the daughter.

9 Q And that would be sixty-eight; is that
10 correct?

11 A Correct.

12 Q Where -- let me ask you this. There is
13 a pool of blood located in the front bedroom by the bed;
14 is that correct?

15 A It's number 3 on my crime report.

16 Q That blood was consistent with the
17 blood of Vanessa Reggett?

18 A That's right.

19 Q As was the blood that was found on the
20 bedspread there in that bedroom; is that correct?

21 A Yes.

22 Q Right on the corner, there; wasn't it?

23 A Yes, it's designated as number 4 on the
24 report.

Zain - Cross

1135

1 Q And the blood -- was it consistent with
2 Vanessa's blood which was also found on the pillow case;
3 is that correct?

4 A Yes, sir, that's correct. The blood
5 stain was found on the pillow, to the right of the child.

6 Q You may take your seat again.

7 MR. HUFFMAN: I don't have any further questions.

8

9 REDIRECT EXAMINATION

10

11 BY MR. REVERCOMB:

12

13 Q Mr. Zain, Mr. Huffman asked you about
14 a number of items that were removed from the scene there
15 and were submitted to you later as being -- they fell in
16 the one in ten thousand or the three in ten thousand
17 group. Are all of those blood samples taken from those
18 various items, are they all consistent with each other?

19 A Yes, sir.

20 Q They could all have originated from the
21 same person?

22 A It's very likely that they did; yes
23 sir.

24 Q What percentage -- three in ten

Zain - Redirect

1136

1 thousand people have the blood characteristics of the
2 defendant, John Moss -- what percentage of that would be
3 ---

4 A The normal populations which are taken
5 into consideration -- gene pools are usually fifty-two
6 to fifty-four percent of the population in female, and
7 forty-eight -- forty-six to forty-eight in males,
8 normally.

9 Q So, assuming a man committed this
10 crime, it would cut these numbers in half?

11 A It could. But, depending on a given
12 population, in a general sense, yes.

13 Q And once again, the blood
14 characteristics of John Moss and the blood
15 characteristics found on several of these items, the
16 little girl's pajama top, the curtain on the back door,
17 and the Christmas wrapping paper would exclude ninety-
18 nine point nine percent of the population?

19 A So far as being the possible
20 contributors that would have that combination of blood
21 types, yes.

22 Q They don't exclude the defendant; do
23 they?

24 A That's correct.

Zain - Redirect

1137

1 MR. REVERCOMB: That's all I have.

2

3

RECROSS-EXAMINATION

4

5 BY MR. HUFFMAN:

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Q I've got one question, Mr. Zain. The blood you tested from the scene, you can't determine from those tests whether it came from a man or a woman; can you? Based on the sample that you used, you can't tell -- based on what you saw?

A At the time and place at that analysis time, it was unavailable to me. It can be done, is why I'm hesitating. But it was not available to be done at the time.

Q And DNA testing is what you do now; is that correct?

A Yes, sir.

Q And in this particular case, the DNA testing that was done most recently by you was inconclusive; is that correct?

A Yes, sir.

MR. HUFFMAN: No further questions.

Zain - Re-redirect

1138

1 RE-REDIRECT EXAMINATION

2

3 BY MR. REVERCOMB:

4

5 Q DNA testing wasn't available in 1979;
6 was it?

7 A That's correct.

8 MR. REVERCOMB: No further questions.

9

10 THE COURT: Folks, we're going to recess until
11 1:30.

12

13 WHEREUPON, the jury was excused for the noon
14 recess.

15

16 THE COURT: Steve, do you have anything else?

17 MR. REVERCOMB: We need to move these into
18 evidence. We need to talk about the possibility of maybe
19 calling another witness, probably an hour.

20 THE COURT: Okay.

21 Do you all have some witnesses?

22 MR. BICKLEY: We have two, that I've seen, your
23 Honor. We have two others that I've not seen, but they
24 were to be here at 1:00 o'clock, anyway.

1 THE COURT: Okay.

2 Mr. Zain, thank you. You may step down.

3

4 WHEREUPON, the Court stood in a recess in the
5 hearing of this case.

6

7 (Back on the Record after Noon Recess)

8

9 THE COURT: Sally, tell the jury that we're going
10 to deal with exhibits, and it will be about ten more
11 minutes.

12 Okay. You want to do some house cleaning now, I
13 take it?

14 MS. LUSK: Yes. The first matter is -- we would
15 simply ask the Court to poll the jury this morning and
16 ask if they have seen that crazy question that Channel
17 13 reporter had asked him out at the scene, when she put
18 a microphone up to his face. We had forgotten to do
19 that. If it's not too late, I would still like to know
20 if any of the jury members saw that.

21 THE COURT: Why don't we bring them in and just
22 ask it?

23 MS. LUSK: I would like to ask them one-by-one,
24 if that would be okay with the Court.

1140

1 MR. BICKLEY: Would that be reversible error if
2 they saw that?

3 If he said he is innocent, would the be
4 reversible error? Why do that?

5 MS. LUSK: Because we didn't have the opportunity
6 to cross-examine him on those statements, and there is
7 a possibility someone could have heard that.

8 MR. REVERCOMB: Or heard about it; that's my
9 concern.

10 I'm worried about one of their friends saying,
11 "Hey, I saw you on TV at the scene."

12 MS. LUSK: Judge, there's another matter that Mr.
13 Bickley had raised in the pre-trial conference -- or Mr.
14 Moss had raised the speedy trial issue. And we had
15 indicated to the Court that the first two continuances
16 were made on motion of the defense, and the third
17 continuance was made on motion of the State.

18 I didn't go through the file itself, but I looked
19 at the Clerk's fee sheet on the computer and was unable
20 to ascertain when Orders had been entered reflecting the
21 two earlier motions, when they were made by the defense.

22 The third motion, made by the State -- there is
23 a motion Order entered -- or the fee sheet reflects that
24 there is one.

1141

1 I took the liberty of asking Judge Canady's Court
2 Reporter to transcribe those two previous hearings.
3 Judge Canady heard both motions. The first one was on
4 March 3rd of 1989, and was very shortly after Mr. Bickley
5 was appointed in the case. At that time, he had
6 different co-counsel, who had moved to withdraw from the
7 case. Mr. Bickley asked the Court to continue the case
8 to the May 1989 Term of Court. So, the defendant
9 specifically agreed to that, as the case reflects.

10 The case was scheduled for trial on September 5,
11 1989. I've prepared an Order reflecting what the
12 transcript shows from that hearing. On September the
13 5th, 1989, Mr. Bickley again appeared and indicated to
14 the Court that at that time he was not prepared to go
15 forward with the case, and he moved the Court to withdraw
16 as counsel. Judge Canady listened to his dissertations
17 and denied the motion to withdraw.

18 At the request of counsel for the defense, the
19 case was scheduled for trial December 11, 1989, and I've
20 prepared an Order reflecting that action as well.

21 I am wondering if the Court -- do you want me to
22 present these to Judge Canady or do you want to enter
23 them both?

24 THE COURT: I think you're probably going to have

1142

1 to present them to him, only because those are probably
2 effectively nunc pro tunc Orders that he's going to have
3 some documenting memoranda that is going to permit him
4 to recall those.

5 MS. LUSK: It's in the transcripts as well.

6 THE COURT: Okay. How about the exhibits? You
7 want to make a motion to put those in; right?

8 MR. REVERCOMB: Yes.

9 THE COURT: You've got a series of numbers.

10 MR. REVERCOMB: Your Honor, I could probably go
11 through them -- the photographs, I have them grouped
12 individually. It shouldn't take too long.

13 Do you want to do that outside the presence of
14 the jury?

15 THE COURT: Yes.

16 MR. REVERCOMB: Your Honor, at this time, the
17 State would move into evidence the following photographs:
18 1, 3, 4, 5, 12, 85, 86, 87, 88, 89, 50, 47, 57, 63, 46,
19 51, 48, 65, 21, 49, 58, 84, 81, 38, 32, 29, 41, 27, 35,
20 40, 56, 34, 17, 16, 6, 20, 45, 52, 59, 82, 22, 8, 9, 64,
21 15, 24, 54, 55, 66, 67, 69, 10, 79, 73, 74, 71, 130,
22 which is the autopsy of Vanessa Reggett, showing the
23 gashes in her head, consistent with the gun butt; State's
24 Exhibit 126, which is a photograph showing a close-up of

1143

1 her face, showing the petechiae that Dr. Sopher
2 described. State's Exhibit 159, that's Vanessa Reggett
3 in life, taken on November 5, 1979. State's Exhibits 121
4 through 126, which are the lifts, or photographs of
5 lifts, that Lieutenant Shumate testified to.

6 THE COURT: Lifts, l-i-f-t-s?

7 MR. REVERCOMB: Yes, lifts. The rest of them are
8 photographs. State's Exhibit 162, 163, 164, 165 and 166.
9 The last four named are battle ground scenes which are
10 photographs taken by Mr. Paul Reggett. 162 is a picture
11 of Paul Reggett taken on November 5, 1979.

12 Those, your Honor, I believe, are the
13 photographs.

14 As to the other exhibits, the State would move
15 into evidence Exhibit No. 91, the I.D. card which Trooper
16 Smith testified to. Both 92 and 93, those are the Waiver
17 of Rights forms, taken on October 28, 1980, dealing with
18 the defendant, John Moss. 92 and 93, and State's Exhibit
19 98, the time card of UPS, that's Paul Reggett's time
20 card. State's Exhibit 99, which is a child's dish set.
21 State's Exhibit 100 is silverware or flatware which Mrs.
22 Arbutus Johnson testified to. 101 is the type handle
23 camera, and number 102 is the camera taken -- which the
24 Troopers received from John Moss's father on October 29,

1144

1 1980. That's also the camera that Paul Reggett
2 identified as his.

3 103 is pistol grips. 104 is powder residue. 105
4 is the vacuum cleaner cord, 106 is the lantern or
5 flashlight, 107 is a Christmas bowl box, 108 is pieces
6 of a knife blade, 109 is the curtain from the back door.
7 110-A and B is a cord, a white cord, one that is cut in
8 pieces, it's cut in two. 110-A is the long piece and
9 110-B is the short piece which Trooper Zain testified to.
10 110-B is the piece that was stuck to the door, and 111
11 is also a cord. 112 is an electrical cord, 113 is an
12 electrical cord from the clock radio.

13 114 is Christmas wrapping that consists of a
14 couple of pieces in that envelope. 115 is the change
15 purse. 116-A is Bernadette Reggett's little pajama top,
16 117, 118, and 119 are three more cameras taken from the
17 Moss home in Cleveland on October 29, 1980.

18 120-A should be sealed probably and not put into
19 evidence but put into the Court file, 120-B is a
20 duplicate tape of the confession. I've already listed
21 the photographs 121 through 126. 127 is the clock radio.
22 I've already listed 130, the autopsy photo of Vanessa,
23 showing the head gash.

24 State's Exhibits 134 through 137, that consists

1145

1 of charts that Trooper Zain testified to today, as well
2 as the crime scene chart.

3 THE COURT: This (Indicating)?

4 MR. REVERCOMB: Yes, sir.

5 155 is Vanessa's nightgown, 156 is Paul Eric's
6 pajamas, two pieces. 157 is a handkerchief box, 158 is
7 the scissors. I've already listed 159.

8 Your Honor, I believe that's it. Let me check
9 just to make sure.

10 Your Honor, other than that, some of these
11 exhibits -- the photographs have been renumbered as
12 exhibits, but that corresponds with the numbers used the
13 last time, the same photographs. However, these other
14 exhibits may have stickers with Ernestine Whitlock's
15 initials, dated from '84.

16 THE COURT: We'll switch them all before anything
17 goes to the jury. We'll sanitize the whole treatment.

18 MR. REVERCOMB: At this time, I would move those
19 into evidence, your Honor.

20 THE COURT: Now, that series of numbers which you
21 gave on the photographs, now I take it those are the
22 photographs that we've reviewed at some length during
23 pre-trial conference?

24 MR. REVERCOMB: That's true, your Honor. They

1146

1 were grouped by room, as to inside and outside of the
2 house. That's how we reviewed them, I believe.

3 MR. BICKLEY: I'm assuming, like yourself, your
4 Honor, that those photographs -- there's no addition to
5 what we've reviewed in the back?

6 MR. REVERCOMB: Your Honor, there are a couple of
7 additions. 126 -- or I mean 26, is a close-up of
8 Vanessa's face.

9 MR. BICKLEY: I recognize that.

10 MR. REVERCOMB: Of course, we reviewed 159 back
11 there at the time and laid a foundation with Dr. Sopher.

12 THE COURT: Here's what I'm going to suggest.
13 I'm going to admit all of these photographs and
14 documents, saving the objections you've previously made.

15 Also, before anything goes to the jury, we'll go
16 one-by-one through them, to make sure there are no
17 markings on them that we need to change labels. We'll
18 do all of that stuff before we send anything back there.

19 MR. BICKLEY: That's fine.

20 THE COURT: They'll be received.

21 Do you have any further evidence to put on?

22 MS. LUSK: No.

23 THE COURT: The State rests?

24 MS. LUSK: Yes.

1147

1 THE COURT: Do you want to announce that before
2 the jury?

3 MS. LUSK: Yes.

4 THE COURT: You want to argue motions; don't you?

5 MR. BICKLEY: Yes, your Honor.

6 THE COURT: Let's go ahead and do it.

7 MR. BICKLEY: We would move for a directed
8 verdict. We feel that the State has not proven its case
9 beyond a reasonable doubt and have not put on a prima
10 facie case. And I think the Court should move for a
11 directed verdict.

12 THE COURT: The motion will be overruled.

13 MS. LUSK: Should we move the admission of the
14 exhibits before the jury, too?

15 THE COURT: I don't think so. That's all right.

16

17 (Back on the Record with the jury present)

18

19 MS. LUSK: Judge, are you going to poll the jury?

20 THE COURT: Do you mean individually? Let's see
21 what reaction we get generally, and then we'll see if we
22 need to poll them individually.

23 Just before we get started, let me ask, folks,
24 although it is readily apparent that there was a bunch

1148

1 of news people at the former residence of the Reggett's,
2 and I know that all of you have been careful not to watch
3 any news reports, but accidentally, did any one of you
4 see that news coverage?

5 (No response from the Jurors)

6 THE COURT: It's something that is totally out of
7 your control. You can be the most circumspect and
8 cautious jurors in the world, and somebody can talk to
9 you about that coverage.

10 Have any of you had friends come up and say
11 anything to you, that they had seen your face in the
12 newspaper or on television or anything?

13 JUROR: (Raising hand)

14 THE COURT: Yes?

15 I think what I'm going to do -- and there is not
16 a thing you can do about that one way or another. I am
17 going to take just a couple of minutes and ask that each
18 of you individually come back to the Jury Room and I'll
19 talk with each of you briefly about it. It shouldn't
20 take more than about five minutes.

21

22 WHEREUPON, the Court stood in a recess in the
23 hearing of this case.

24

1149

1 (Back on the Record in the Jury Room)

2

3 THE COURT: Sally, would you bring in Mr. Gancs,
4 please?

5

6 WHEREUPON, Juror Steve Gancs was brought to the
7 Jury Room for individual voir dire.

8

9 THE COURT: Mr. Gancs, come on in. After having
10 seen you, did any of your friends talk to you?

11 JUROR GANCS: They just -- I think it was
12 Saturday, I had some friends say they had seen me on the
13 news, and I said, "Well, that's nice, but I'd rather you
14 not tell me anything about it. Don't go into anything."

15 THE COURT: Did they say anything else?

16 JUROR GANCS: No, they just said, "Okay, why
17 can't you?" And I said, "Because I'm not allowed to talk
18 about it. The Judge said no, and I don't want to discuss
19 it."

20 THE COURT: Did they tell you any specifics or
21 anything they saw?

22 JUROR GANCS: I didn't give them a chance to.

23 THE COURT: Terrific.

24

1150

1 WHEREUPON, Steve Gancs was released, and William
2 Boyd was brought to the Jury Room for individual voir
3 dire.

4
5 THE COURT: Hi, Mr. Boyd. How are you? Did you
6 have some friends who said something to you about
7 something on TV?

8 JUROR BOYD: Just that they asked me if I had
9 seen myself on TV, and I said, "No, not since Christmas."
10 And somebody asked me if I had seen my picture in the
11 paper, and I said, "Not since Christmas," and left there.

12 THE COURT: That's it?

13 JUROR BOYD: And one attorney who is a friend of
14 mine said, "Was your picture in the paper?" and I said
15 that I didn't see it.

16 THE COURT: Who was that?

17 JUROR BOYD: Bob Louderback. He goes to our
18 church. We were cooking pancakes, a couple of guys in
19 the kitchen.

20 THE COURT: So, nobody has told you anything
21 other than that they had seen your picture in the paper?

22 JUROR BOYD: That's all they've said.

23 THE COURT: Thanks.

24

1151

1 WHEREUPON, William Boyd was released, and Frances
2 Batman was brought to the Jury Room for individual voir
3 dire.

4

5 THE COURT: Hi, how are you?

6 JUROR BATMAN: I'm fine.

7 THE COURT: Did any of your friends see you on TV
8 or in the newspaper?

9 JUROR BATMAN: No. A lady at church yesterday
10 said, "I seen your picture on the TV. You had your back
11 to me." I said, "Well, don't talk to me about it."

12 THE COURT: Did she say anything to you at all
13 about what she had seen on there?

14 JUROR BATMAN: No. That was all that was said.

15 THE COURT: Good.

16

17 WHEREUPON, Frances Batman was released.

18

19 THE COURT: I think it's more important to the
20 defendant than to you guys because they saw the defendant
21 say he didn't do it, and then he doesn't take the stand.
22 I think that's much more -- creates much more of a
23 problem for him than it does for you.

24 MR. REVERCOMB: I agree.

1152

1 MS. LUSK: The whole question was so inane
2 anyway. What would you expect him to say -- yes? For
3 heaven's sakes.

4
5 WHEREUPON, Elizabeth Stern was brought to the
6 Jury Room for individual voir dire.

7
8 THE COURT: Did somebody say something about
9 seeing you?

10 JUROR STERN: Yeah, I've had a couple of people
11 say they've seen me.

12 THE COURT: What did they say?

13 JUROR STERN: Well, my boss mentioned that he saw
14 me, and he's got jury duty next time. He called me at
15 home Saturday morning to tell me that he had got this
16 letter saying that he'd been accepted. I said, "Well,
17 as much as you travel, you could probably get off." He
18 said, "No, I want a case like yours so my picture is in
19 the paper." That's the first thing I knew about it.

20 Other than that, my mother did see me on TV, but
21 she didn't mention the picture on Saturday. She showed
22 me the picture, but I didn't read the article.

23 THE COURT: It was a great picture of me, wasn't
24 it?

1153

1 JUROR STERN: It was good.

2 THE COURT: My wife said, "Were you mad at all of
3 those poor people?" She said I looked like I was
4 shouting at everyone. I told her I was trying to hide
5 from the camera.

6 Has anybody talked to you about anything of
7 substance in this matter?

8 JUROR STERN: No. The only remark that was made
9 was made by my mother.

10 THE COURT: What did she say?

11 JUROR STERN: I can't tell you right now.

12 THE COURT: Even if I insist?

13 JUROR STERN: I'd prefer not to, but I will if
14 you insist. She is slightly prejudiced. So I take it
15 with a grain of salt.

16 THE COURT: What did she say?

17 JUROR STERN: She made some remark, and I said,
18 "Well, hey," ---

19 THE COURT: Let me ask you an important question.
20 Did what she said have any influence on you?

21 JUROR STERN: My mother hasn't had any influence
22 on me for years. I'm sorry. We don't get along too well
23 sometimes, so I just kind of say yeah, okay, and go on.

24

1154

1 WHEREUPON, Elizabeth Stern was released, and
2 Linda Haynes was brought to the Jury Room for individual
3 voir dire.

4
5 THE COURT: Hi. Did anybody happen to say that
6 they saw you?

7 JUROR HAYNES: No. My husband mentioned that he
8 saw some jurors go through. He didn't even recognize me.

9 THE COURT: He's not very observant?

10 JUROR HAYNES: No.

11 THE COURT: Did anybody tell you what they heard?

12 JUROR HAYNES: No.

13 THE COURT: Thanks.

14

15 WHEREUPON, Linda Haynes was released, and Sherry
16 Grubb was brought to the Jury Room for individual voir
17 dire.

18

19 THE COURT: Did somebody call you and tell you
20 that they saw you on TV?

21 JUROR GRUBB: Yes, my mother called. She didn't
22 tell me; she told my husband that she saw me in the
23 paper. When I called her this morning from work, the
24 receptionist inquired as to what case I was on, and I

1155

1 told her that I couldn't tell.

2 THE COURT: So, nobody has talked to you about
3 anything?

4 JUROR GRUBB: No.

5 THE COURT: Good.

6

7 WHEREUPON, Sherry Grubb was released, and
8 Jacqueline Hill was brought to the Jury Room for
9 individual voir dire.

10

11 THE COURT: Ms. Hill, did anybody say that they
12 saw you on TV?

13 JUROR HILL: On TV and in the paper, too.

14 THE COURT: What did they say?

15 JUROR HILL: They called me, Mrs. Jordan and Mrs.
16 Lafferty, and I said, "No comment," and went on.

17 THE COURT: Nobody has told you what they saw
18 other than just to see your picture?

19 JUROR HILL: No, sir.

20 THE COURT: That's all. Thanks.

21

22 WHEREUPON, Jacqueline Hill was released, and
23 Martha Brady was brought to the Jury Room for individual
24 voir dire.

1156

1 THE COURT: Hi. Did people say they saw you on
2 TV?

3 JUROR BRADY: I saw me on TV, but I had the mute
4 off.

5 THE COURT: Tell me what you saw.

6 JUROR BRADY: I just saw us in a group, that's
7 all I saw, and then I turned it over.

8 THE COURT: Has anybody talked to you?

9 JUROR BRADY: The only thing they said is they
10 saw me on television -- family and neighbors.

11 THE COURT: They didn't tell you anything about
12 it?

13 JUROR BRADY: I just told them that I couldn't
14 talk about, and that's all.

15 MS. LUSK: What channel do you watch?

16 JUROR BRADY: I have a remote, so I switch.

17 THE COURT: They have a pool camera. It was 13
18 that was out there.

19 MR. BICKLEY: 13 had their own camera.

20 MS. LUSK: They all had their own.

21 THE COURT: You don't recall -- it wouldn't have
22 any effect on you as a juror?

23 JUROR BRADY: No.

24 THE COURT: Thank you.

1157

1 WHEREUPON, Martha Brady was released, and Michele
2 Williamson was brought to the Jury Room for individual
3 voir dire.

4

5 THE COURT: Hi, how are you? Did somebody say
6 they saw you?

7 JUROR WILLIAMSON: Just to save you time, I'm as
8 pure as the driven snow, as far as this goes.

9 THE COURT: You don't know nothing at all?

10 JUROR WILLIAMSON: One person this morning kind
11 of said that his first case lasted nine weeks, so we
12 asked him to change the subject and he did.

13 THE COURT: Who was he?

14 JUROR WILLIAMSON: I have no idea who he was.

15 THE COURT: But he was not in your group?

16 JUROR WILLIAMSON: No, no. It was the other
17 guys.

18 THE COURT: Will that have any effect on your
19 considerations here?

20 JUROR WILLIAMSON: I don't know why it would.

21 THE COURT: Well, you know better than anybody
22 else.

23 JUROR WILLIAMSON: I didn't put much stock in it.
24 I figured well, as long as he doesn't say anything else,

1158

1 it's okay.

2 THE COURT: Thank you.

3

4 WHEREUPON, Michele Williamson was released, and
5 Nolan Holstein was brought into the Jury Room for
6 individual voir dire.

7

8 THE COURT: Hi, Mr. Holstein.

9 JUROR HOLSTEIN: How do you do, sir.

10 THE COURT: Has anybody talked to you about
11 seeing you on television?

12 JUROR HOLSTEIN: No, sir.

13 THE COURT: Has anybody talked to you about any
14 of the news coverage or what you are doing?

15 JUROR HOLSTEIN: My boy came in and said I was on
16 TV. We didn't even discuss it.

17 THE COURT: You wouldn't let him talk to you
18 about it?

19 JUROR HOLSTEIN: No.

20 THE COURT: Have any jurors in this case or any
21 other case talked to you about this case or mentioned it
22 to you?

23 JUROR HOLSTEIN: No, sir.

24 THE COURT: Not at all?

1 JUROR HOLSTEIN: No.

2 THE COURT: Thank you.

3

4 WHEREUPON, Nolan Holstein was released, and Wanda
5 Young was brought to the Jury Room for individual voir
6 dire.

7

8 THE COURT: How do you do, Mrs. Young. How are
9 you?

10 JUROR YOUNG: Fine.

11 THE COURT: Has anybody seen you on TV or said
12 anything to you about it?

13 JUROR YOUNG: No.

14 THE COURT: Or in the newspaper?

15 JUROR YOUNG: No. I saw a picture Saturday, but
16 I did not read the article.

17 THE COURT: I didn't either, as I usually don't.
18 Has any other juror, either on this case, or in any other
19 case, said anything to you about the case?

20 JUROR YOUNG: I heard someone mention it in the
21 Jury Lounge this morning. Someone else told him to shut
22 up.

23 THE COURT: Do you remember what anybody said
24 about it?

1160

1 JUROR YOUNG: No, I don't.

2

3 WHEREUPON, Wanda Young was released.

4

5 THE COURT: Sally, before you go after the next
6 one -- were you in with them this morning?

7 THE CLERK: No. I just went in to get them and
8 that's all.

9 THE COURT: Have you heard anybody say that the
10 first trial was nine weeks?

11 THE CLERK: No.

12 THE COURT: Do you know if there has been any
13 other Clerks back there?

14 THE CLERK: When I went in this morning, she had
15 already made the roll call.

16 THE COURT: Who would have done that?

17 THE CLERK: Darlene Smith.

18 THE COURT: Would you do me a favor? Once we get
19 the next witness on the stand, would you break away from
20 us and ask her if she would come up, please?

21 THE CLERK: Okay.

22

23 WHEREUPON, Alice Fawcett was brought to the Jury
24 Room for individual voir dire.

1161

1 THE COURT: Hi, how are you?

2 JUROR FAWCETT: Fine.

3 THE COURT: Let me ask you something. Has
4 anybody mentioned seeing you on TV or in the newspapers?

5 JUROR FAWCETT: No one even knows that I'm on
6 this case but my husband.

7 THE COURT: Okay. Have you heard any of the
8 jurors, either from this case or from some other case,
9 say anything about it?

10 JUROR FAWCETT: No.

11 THE COURT: Nothing at all?

12 JUROR FAWCETT: No. From all I've heard, the
13 case isn't even going on.

14 THE COURT: That's great news. Thanks.

15

16 WHEREUPON, Alice Fawcett was released, and
17 Beverly Samples was brought to the Jury Room for
18 individual voir dire.

19

20 THE COURT: Hi.

21 JUROR SAMPLES: Hello.

22 THE COURT: I just wanted to know if anybody has
23 seen you on TV or said something to you about it?

24 JUROR SAMPLES: They did say, "I saw you on TV,"

1162

1 and I would say, "You did?" And that's it.

2 THE COURT: Nobody has told you anything about
3 what they've seen or heard?

4 JUROR SAMPLES: Just that they saw somebody they
5 knew.

6 THE COURT: I didn't even see myself and I've had
7 everybody say that they've seen me.

8 Have you heard any of the jurors, either the
9 jurors who are a part of this panel or other jurors, say
10 anything about the case?

11 JUROR SAMPLES: No, not in my hearing.

12 THE COURT: Thank you.

13

14 WHEREUPON, Beverly Samples was released.

15

16 THE COURT: Okay, Sally?

17 THE CLERK: Judge, your answer to that was no,
18 she did not hear anybody say anything in the Jury Lounge.

19 THE COURT: I'll tell you what I'm going to do,
20 I'm going to have them come in in the morning and have
21 them come back here.

22 MR. BICKLEY: The jury panel?

23 THE COURT: Yes. Instead of going back there.

24

1163

1 WHEREUPON, George Ball was brought to the Jury
2 Room for individual voir dire.

3

4 THE COURT: Hi.

5 JUROR BALL: Howdy.

6 THE COURT: Have a seat. Has anybody seen you on
7 TV and said something to you about it?

8 JUROR BALL: Yes, sir.

9 THE COURT: Have they? Did anybody say anything
10 about the case, other than seeing you on television?

11 JUROR BALL: No.

12 THE COURT: Nobody has told you anything about
13 what they saw or anything?

14 JUROR BALL: My wife criticized me for my
15 appearance.

16 THE COURT: She did?

17 JUROR BALL: She told me I need a haircut.

18 THE COURT: You should have told her that you
19 weren't expecting an audition.

20 Have you heard any of the other jurors talk about
21 the case, or any other jurors that are not a part of this
22 case?

23 JUROR BALL: No.

24 THE COURT: Fine. Thank you.

1 WHEREUPON, George Ball was released.

2

3 (Back on the Record in the Courtroom, with the
4 Jurors present)

5

6 THE COURT: Does the State rest?

7

MS. LUSK: Yes, the State rests.

8

9 WHEREUPON, Alexander Fortson, was duly sworn,
10 upon his oath, and testified as follows:

11

12 THE COURT: The Defense has already called their
13 first witness, who has already been sworn.

14

15 DIRECT EXAMINATION

16

17 BY MR. HUFFMAN:

18

19 Q Would you state your name, please, for
20 the record?

21

A Alexander Fortson.

22

23 Q Make sure that you scoot near the
microphone so that everyone can hear you.

24

Where do you live?

Fortson - Direct

1165

1 A 7025 Chesapeake Avenue, St. Albans.

2 Q And that house is next door to the
3 house that the Reggett's were living in; is that right?

4 A That's right.

5 Q And for the jury's benefit, you were
6 the landlord who owned that house, from whom they rented;
7 is that correct?

8 A Yes.

9 Q When did the Reggett's first move into
10 that house?

11 A It was in the spring. I don't know the
12 exact date, but it was in the spring.

13 Q Was it in the spring of 1979?

14 A Right.

15 Q Do you know where they were living
16 before they moved into your house?

17 A They lived in Gene's Motel in -- on
18 MacCorkle Avenue, about a quarter of a mile up the
19 highway.

20 Q Whenever they moved into your house,
21 the house next door to you that they rented from you, do
22 you recall if they had any possessions?

23 A Furniture-wise, no, they didn't have
24 any. They had a few personal things, but no furniture.

Fortson - Direct

1166

1 Q As far as appliances in the house, was
2 there a refrigerator there when they went and moved in?

3 A No.

4 Q At the time they moved in, what were
5 they using, if you know, for a refrigerator?

6 A One of those coolers, like a Coleman.
7 I don't know the exact name of it, but it was that type
8 of a cooler.

9 Q Was a refrigerator later put in the
10 house?

11 A Yes.

12 Q Describe for the jury how that
13 happened, how that all came about?

14 A Well, we had bought a refrigerator --
15 a new refrigerator-freezer, and we had this one in a
16 utility room, and we knew that they didn't have one, so
17 my wife said we ought to give it to Vanessa. If she
18 wanted to use that refrigerator, we could send it over
19 there and let her use it.

20 Q How did that refrigerator come to end
21 up in the house?

22 A I think Paul -- Mr. Reggett's
23 grandmother paid some boys to move it over.

24 Q Did you discuss at all with Mr.

Fortson - Direct

1167

1 Reggettz about him moving the refrigerator?

2 A No, I just told my wife that I wasn't
3 going to move it, because at the time I was under a
4 doctor's care, anyway.

5 Q Did Mr. Reggettz come to you personally
6 and make any arrangements for the new refrigerator to be
7 moved, himself?

8 A No.

9 Q Did you ever observe Mr. Reggettz do
10 any work around the house while he lived there?

11 A No.

12 Q Did he ever mow the grass?

13 A No.

14 Q Did Mrs. Reggettz ever mow the grass?

15 A Yes, I know that because she used my
16 lawn mower.

17 Q Now, again, let me direct your
18 attention to December, 1979 -- they were still renting
19 from you at that time; is that correct?

20 A Right.

21 Q Now, I believe in December of 1979 you
22 were employed at Union Carbide; is that correct?

23 A Yes.

24 Q On a normal day, what kind of -- what

Fortson - Direct

1168

1 time of day did you normally get up?

2 A 5:00 o'clock.

3 Q That's a.m., correct?

4 A In the morning, yes.

5 Q Did you drive yourself to work?

6 A No.

7 Q How did you get to work?

8 A I rode with a fellow who picked me up
9 out there at what is called the A&W, out on MacCorkle.

10 Q What time did you normally leave your
11 house to catch the ride to go to work?

12 A I would normally come out about five
13 after six.

14 Q 6:00 a.m., is that correct?

15 A Yes.

16 Q Do you recall, in December
17 specifically, going to work on December 13, 1979?

18 A Yes.

19 Q What time did you get up that day?

20 A The same time, 5:00 o'clock.

21 Q Did you leave the house at the same
22 time that day as you usually did?

23 A Yes.

24 Q Is that correct?

Fortson - Direct

1169

1 A Yes.

2 Q On that particular morning, whenever
3 you got up at 5:00 o'clock in the morning, did you hear
4 any noise coming from the house next door?

5 A No.

6 Q First, let me ask you, I know that the
7 jury has been there -- about how far -- what's the
8 distance between your house next door and the house that
9 the Reggett's were living in?

10 A It's a little less than twenty-five
11 feet.

12 Q Between 5:00 and 6:00 o'clock in the
13 morning, did you see anyone going in or out of that house
14 next door?

15 A No.

16 Q Did you hear any sounds, such as a gun
17 shot, in that house?

18 A No.

19 Q Did you notice anything unusual about
20 the house when you left to go to work that morning?

21 A The only thing I can remember was the
22 lights were on, on this side of the house. As I come out
23 my back, the lights were on in the kitchen and that next
24 room, right there. They are normally not on at that time

Fortson - Direct

1170

1 of the morning because he was at work and they were in
2 bed, evidently.

3 Q Now, the side of their house -- if we
4 look at this diagram up here (Indicating), the side of
5 the house that is close to your house is the side of the
6 house that the kitchen is on and what has been referred
7 to as the TV room and the living room; correct?

8 A Right.

9 Q On that day, did you leave your house
10 -- well, let me ask you this. What door did you go out
11 when you left to go to work?

12 A I went out the back.

13 Q So, when you left to go out the back of
14 your house, how would you get out to the street?

15 A I'd make a left turn after I'd get out
16 of the house, then I'd make a right turn down the
17 driveway and walk out to the highway.

18 Q That's the driveway between your house
19 and the house that the Reggett's lived in?

20 A That's right.

21 Q The other day when we were all out
22 there, and the jury was there, and they saw the yard
23 around the house, there is something different now about
24 the back yard than there was in December of 1979?

Fortson - Direct

1171

1 A Yes. About fifteen feet at the back,
2 it's kind of -- now, it's been filled in, when they put
3 the sewer in that area, they had extra dirt and they just
4 filled that in and leveled that off in the back. It used
5 to be kind of swampy back there.

6 Q So, the present grade level of the back
7 yard is higher than it was in December of 1979?

8 A Right.

9 Q Is that correct?

10 A Right.

11 Q Do you remember what the weather was
12 like that day?

13 A Well, it was rainy and damp.

14 Q Do you recall if there was any water
15 standing in the back yard?

16 A Any time it rained.

17 Q When we were out at the house the other
18 day, is there anything else that is different about the
19 house, other than what the jury had already understood
20 is different now from what it was in December of 1979?
21 Particularly, I'm talking about the bath room.

22 A The bath room had a window and we took
23 the window out and closed the opening there when we built
24 the shower in, put a show kit in there, which went up

Fortson - Direct

1172

1 over top of the window there. So, we just boarded it up
2 and filled it up.

3 We put a closet with utility shelves at the end
4 of the bath tub.

5 Q And that window was apparently there in
6 December of 1979; is that correct?

7 A Oh, yes.

8 Q And it was still there throughout the
9 next year?

10 A Right. Yeah. For fourteen months, or
11 a little better.

12 Q After the Police were there
13 investigating on December the 13th, what happened at the
14 residence?

15 A Well, the window had been opened, and
16 the front door was opened. The reason the door was open,
17 I think, is because whoever went in there went out the
18 front and left the door unlocked.

19 Q When the Police left there on December
20 13th of 1979, did they lock the house up?

21 A Right.

22 Q Did you later discover some time that
23 winter that someone had been inside that house?

24 A Right.

Fortson - Direct

1173

1 Q That's one of the reasons the back
2 window was eliminated; is that correct?

3 A Well, yes. Then, again, like I said,
4 we put that shower in there.

5 Q Do you recall when you discovered the
6 front door of that house open? Do you recall which month
7 it was? What year?

8 A It was the next year. It was '80, I
9 guess, but I don't know exactly. It was during the
10 winter months, because I was kind of curious about how
11 much longer the thing was supposed to be on the door.
12 And that's one reason I noticed the door being open.

13 Q So, it would have been some time after
14 Christmas, or the early part of 1980?

15 A Oh, yes.

16 MR. HUFFMAN: No further questions.

17

18 CROSS-EXAMINATION

19

20 BY MS. LUSK:

21

22 Q Mr. Fortson, after this incident
23 occurred next door to you, the Police talked to you about
24 it when it was fresh on your mind; is that right?

Fortson -- Cross

1174

1 A Yes.

2 Q Now, do you recall whether Mr.
3 Reggett's car was at home at 6:00 o'clock in the morning
4 when you went out?

5 A No, no, I don't recall that it was
6 there, no.

7 Q You don't believe that it was there or
8 you don't remember? I didn't mean to confuse you.

9 A I don't recall seeing it. It's not
10 that I don't remember; I just don't recall seeing it.

11 Q Do you remember -- and the reason that
12 I'm asking you this -- do you remember talking to the
13 Police on December 13th of 1979?

14 A When?

15 Q The day they found the bodies.

16 A Yes.

17 Q At that time -- I don't know if you
18 recall, you told the Police that Paul's car was not at
19 home. And I'll hand you a typewritten statement. Would
20 you examine that?

21 A What, the paper?

22 Q Yes. Does that help jog your memory
23 about whether the car was there?

24 A Not really.

Fortson - Cross

1175

1 Q Now, let me ask you this, Mr. Fortson,
2 when you were describing the lights that were on in the
3 house -- which you saw in the house ---

4 A Yes.

5 Q --- they were on the side of the house
6 that you lived on; right?

7 A Right.

8 Q Now, the bathroom, the one Mr. Huffman
9 was asking you about the window, that bathroom window
10 would have been on the other side of the house; is that
11 right?

12 A That's right.

13 Q That was not on the same side of the
14 house that you lived on?

15 A What?

16 Q That was not on the same side of the
17 house that you lived on?

18 A Right.

19 Q Now, on December 13th of 1979, do you
20 remember where Paul Reggettz parked his car when he came
21 home from work?

22 A Where he normally parked or where he
23 parked it then?

24 Q Where he parked it that day.

Fortson - Cross

1176

1 A Where he parked it that day was in the
2 driveway.

3 Q That was a different place than he
4 normally parked it; wasn't it?

5 A Right.

6 Q He probably had never blocked your
7 driveway before; had he?

8 A No, he didn't.

9 Q He usually had a parking space that was
10 down in front of your house where traffic could pass; is
11 that right?

12 A That's right.

13 Q Now, the back door of this home, Mr.
14 Fortson, didn't really have a regular knob on it; did it?

15 A No.

16 Q And when you went to close it, it was
17 kind of hard sometimes; wasn't it?

18 A Well, you raise it up and tilt it up
19 and push.

20 Q You had to pull up on it and push?

21 A Yes.

22 Q And then it had a slide for a type of
23 lock?

24 A Right.

Fortson - Cross

1177

1 Q So, the door had to be pulled up and
2 shut and then the slide part closed; right?

3 A Right.

4 Q Now, if the slide bar was in the
5 engaged position before you pushed on the door, the door
6 wouldn't close; would it?

7 A No.

8 Q Now, Mr. Huffman asked you about
9 whether you heard anything when you got up for work and
10 you told him that you did not; right?

11 A Right.

12 Q But the fact of the matter is, you
13 didn't hear anything going on; did you?

14 A No.

15 Q You didn't hear a gun shot, regardless
16 of when it went off?

17 A Right.

18 Q It could have gone off at 10:00
19 o'clock, or 2:00 o'clock, or 6:00 o'clock, but you didn't
20 hear the gun shot?

21 A If it had of went off before 11:00
22 o'clock, I would have heard it, because I was up.

23 Q But whatever time it went off, you
24 didn't hear it?

Fortson - Cross

1178

1 A No.

2 Q Mr. Fortson, just to clarify something
3 -- I think I understood you to say that there was no
4 standing water in the back yard?

5 A It has -- there has been water standing
6 every time it rained. It had been raining pretty hard
7 at that time.

8 Q You're talking about back close to the
9 railroad tracks?

10 A Well, about ten or fifteen feet from
11 the railroad tracks, where they filled it in. It kind
12 of slipped down.

13 Q Uh-huh.

14 A That's where the water used to stand.

15 MS. LUSK: That's all of the questions that I
16 have.

17 MR. HUFFMAN: We have no further questions of
18 this witness.

19 THE COURT: May he be excused?

20 MR. HUFFMAN: Yes.

21 THE COURT: Mr. Fortson, you may step down.

22 Okay. Mr. Moss, would you step up here and be
23 sworn, please.

24

1179

1 WHEREUPON, Willie James Moss was duly sworn, and
2 upon his oath, deposed as follows:

3

4

5

DIRECT EXAMINATION

6

7 BY MR. BICKLEY:

8

9 Q Would you state your name please, and
10 your address, for the record?

11 A My name is Willie James Moss. I live
12 at 13817 Eaglemere Avenue, Cleveland, Ohio.

13 Q Are you any relation to John Moss, the
14 gentleman sitting here in the maroon coat?

15 A I know John.

16 Q Now, sir, I guess the simplest thing I
17 need to do -- did you have occasion to be living in St.
18 Albans, West Virginia, in 1979?

19 A Yes, I did.

20 Q Where did you live?

21 A My father's house.

22 Q Who was living with you at that time?

23 A My mother and father and John and
24 myself.

Moss, Willie - Direct

1180

1 Q That would be John's grandparents?

2 A Yes.

3 Q Sir, would you put on the board there,
4 and draw a sketch of your father's home, as it was at
5 that time?

6 A This here is what used to be a porch,
7 but it was enclosed. It covered the front of the house
8 into a room. This was my father's room (Indicating).

9 Q Put your father's room, FR.

10 A This is a room with a door leading out
11 of here, this is my mother's room.

12 Q Where is the door to the room, the
13 entrance?

14 A There's an entrance here and an
15 entrance here.

16 Q All right, sir. Go ahead, please.

17 A This is the room that John slept in.

18 Q Okay.

19 A Over here is the living room. This is
20 the kitchen. This is completely open here.

21 Q All right.

22 A Back here was a little bath room.
23 There is a door coming out here into the kitchen, and
24 then from the kitchen to the outside.

Moss, Willie - Direct

1181

1 Q Okay. Would you close that wall off
2 there -- kind of close up the house, if you will.

3 A This is a doorway coming out of the
4 kitchen, and this is a garage over here. There is a door
5 going in here. There is a little patio-like thing here
6 at the front door, coming out.

7 Q All right. Is there any other exit out
8 of the house, other than that door?

9 A Over here is the only other exit.

10 Q Okay. And where were you sleeping?

11 A I was sleeping here on the couch.

12 Q Okay. Would you take your seat now, if
13 you're finished.

14 Before I go into the explanation of the house,
15 Mr. Moss, did there come a time that you had to send John
16 to Cleveland?

17 A Yes, sir, there was.

18 Q What was the problem?

19 A I had just come to live there and I
20 noticed that John was smoking marijuana, or whatever it
21 was, and I smelled it. And my father -- they didn't know
22 anything about it, but soon after I came to live there
23 I recognized it right away.

24 I got after him about using it in the house, and

Moss, Willie - Direct

1182

1 I promised him that if he did it again I would talk to
2 his parents about it. And he did it again, so I called
3 his parents and explained to them the situation.

4 Q Did he go home?

5 A His parents asked me if I was coming up
6 at Christmas time. At that time, my mother was living
7 in Cleveland with my sister, and my father and I -- we
8 were going up to spend the Christmas holidays with them.

9 They asked me could I put up with him until we
10 came back to Cleveland on our Christmas break. So he
11 stayed until we all went back to Cleveland at Christmas
12 time.

13 Q Okay. Now, I want to direct your
14 attention to December the 12th, on the evening before the
15 tragic murders of the Reggett family.

16 So you recall when John came home from school
17 that day?

18 A It was in the afternoon after school,
19 I would say about 4:00 or 5:00 o'clock.

20 Q Did you all do anything?

21 A I was cleaning up the yard. When John
22 came, he just pitched in and started helping me.

23 Q He started helping you clean the yard
24 up?

Moss, Willie - Direct

1183

1 A Yes.

2 Q Do you recall whether or not he went
3 out that evening -- at any time that evening?

4 A No, I don't.

5 Q Did he go out?

6 A I don't think so; no.

7 Q Do you recall when he went to bed?

8 A About 8:30 or 9:00 o'clock.

9 Q Now, you say John slept in the room
10 where it says JR?

11 A Right.

12 Q And you slept on the couch, almost near
13 the -- I guess, in the living room where you've got LR?

14 A Yes.

15 Q Now, would you be able to observe
16 anyone coming in and out of that house if John was to
17 leave that room?

18 A Yes, I would have to see him.

19 Q What -- could John possibly sneak out
20 of the room without your knowing about it?

21 MS. LUSK: Objection.

22 THE COURT: I'll sustain the objection.

23

24

Moss, Willie - Direct

1184

1 BY MR. BICKLEY:

2

3 Q Is there any way anyone could leave
4 that room without you seeing them?

5 A No.

6 Q Why would you say that?

7 A Because it is completely open. The
8 living room and kitchen is completely open, you would
9 have to go through the kitchen, and I would be looking
10 right at it.

11 Q Suppose you were asleep, sir?

12 A At that time, there was a swinging door
13 there. I could tell. I'm a light sleeper, anyway, and
14 I was there listening for my sick parent, anyway.

15 I was very attuned to noises.

16 Q Your father was sick or your mother?

17 A My mother was sick.

18 Q And you, as far as you know -- John
19 never left the house that night?

20 A Not to my knowledge.

21 Q What time did he wake up in the
22 morning?

23 A About 6:00 or 6:30.

24 Q Who prepared breakfast?

Moss, Willie - Direct

1185

1 A We always worked together on that. We
2 both -- we'd cook. We helped each other with it.

3 Q This is the morning of December 13th.
4 Did he help you prepare breakfast?

5 A Yes.

6 Q Did you notice anything unusual about
7 him?

8 A No.

9 Q Do you recall, did he go to school that
10 morning?

11 A Yes.

12 Q Did you see him take any packages to
13 school?

14 A No more than regular school equipment.

15 Q So, you did not notice anything unusual
16 about him?

17 A No.

18 Q He helped you prepare breakfast, or he
19 prepared his breakfast, or whatever?

20 A Yes.

21 Q Is that correct?

22 A Yes.

23 Q When he went on to school, he had no
24 more than normal school equipment?

Moss, Willie - Direct

1186

1 A Yes.

2 Q Was John working during this particular
3 period of time?

4 A Yes. I think he was working at a
5 little drive-in restaurant.

6 Q A drive-in restaurant?

7 A Yes.

8 Q And was he receiving any money from any
9 other source?

10 A I think my father gave him a little
11 allowance for school lunches and stuff like that.

12 Q Now, Mr. Moss, I want to clear up a
13 point. During this particular time, you testified that
14 your mother was in Cleveland with your sister. Was she
15 there with you all during this time or was she in
16 Cleveland with your sister?

17 A She was there at the time when I was
18 there.

19 Q She was there during the time you and
20 John -- the period of time that we're talking about?

21 A Yes.

22 Q She wasn't in Cleveland at this point?

23 A No. Well, wait a minute. She has been
24 back and forth so much, it's hard to remember. I can't

Moss, Willie - Direct

1187

1 really pin it down.

2 My sister would come down and pick her up and
3 take for a month and bring her back.

4 Q I understand, but do you remember
5 whether or not your mother was home during this
6 particular time that we're talking about -- December 12th
7 through December 13th?

8 A I really am not sure.

9 Q Now, was your father's health good?

10 A He could get around, but he was very
11 old. He was in his late '80's. He couldn't cook for
12 himself, but he could still move.

13 Q And you and John cooked for him?

14 A Right.

15 MR. BICKLEY: I have no further questions.

16

17 CROSS-EXAMINATION

18

19 BY MS. LUSK:

20

21 Q So, I take it, Mr. Moss, that you don't
22 know whether your mom was in Cleveland or Charleston;
23 then that's why you're not so sure your going to
24 Cleveland was to visit her, because she might have been

Moss, Willie - Cross

1188

1 here?

2 A I'll say it again. She goes up -- my
3 sister would come down and pick her up one weekend, bring
4 her back and forth, like that. There was no going up
5 there and staying four or five months, like that.

6 Q But you weren't going home for
7 Christmas to visit your mother in Cleveland if she was
8 in Charleston?

9 A I'm not sure if she was there at the
10 time when I was there with John or not. But when we left
11 going to Cleveland, we were going up there for the
12 Christmas holidays.

13 Q Now, you said that John went to bed at
14 8:30 or 9:00 o'clock at night?

15 A Yes.

16 Q So, he'd had a full night of sleep --
17 eight hours of sleep by 4:00 o'clock in the morning;
18 wouldn't he?

19 A I guess.

20 Q You said you worked together to make
21 breakfast that morning, Mr. Moss. What about the day
22 after?

23 A We did it all the time; breakfast,
24 lunch, and supper.

Moss, Willie - Cross

1189

1 Q So, your recollection is a general one
2 because that's generally what you did?

3 A No. We had to eat. We did that.

4 Q But you don't specifically remember
5 December 11th or 12th?

6 A Not that date, no.

7 Q Or December 13th or December 14th;
8 right?

9 A Not the date itself, no.

10 Q You were telling the jury what your
11 routine was?

12 A Yes.

13 Q Right.

14 A Yes.

15 Q You're not telling them that you recall
16 that specifically, making breakfast on December 13, 1979?

17 A Recalling back.

18 Q You're not telling them that you recall
19 eating breakfast on December 13, 1979?

20 A We made it every day. We did it every
21 day.

22 Q But you don't have a specific
23 recollection of it?

24 A Not specific, no.

Moss, Willie - Cross

1190

1 Q And you don't specifically recall what
2 John took to school on December 13, 1979?

3 A No, I don't. I don't know what he
4 carried to school.

5 Q And you don't specifically recall what
6 time he went to school on December the 13th?

7 A Generally the same time every morning.
8 But specifically, no, I don't.

9 Q Now, you say that you went to Cleveland
10 before Christmas, and you took John home?

11 A Yes.

12 Q You whisked him out of Charleston
13 within a week of these murders; didn't you, Mr. Moss?

14 A Pardon me?

15 MR. BICKLEY: Objection to "whisked him out of
16 Charleston."

17 THE COURT: Sustained.

18

19 BY MS. LUSK:

20

21 Q You didn't even withdraw him from
22 school; did you?

23 A I don't know from what you mean by
24 "whisk him out."

Moss, Willie - Cross

1191

1 I had planned for him to go when I called his
2 parents. They asked me to bring him home on the
3 holidays, when the school vacation began. And that's
4 when he had time to go.

5 Q He didn't even withdraw from school;
6 did he? He didn't take time to withdraw from school?

7 A I don't know how that works.

8 Q You told the Police, Mr. Moss, in
9 February of 1980, that shortly before Christmas you had
10 seen John in the back yard with a BB gun or a .22 rifle;
11 didn't you?

12 A No, I didn't. I never told anyone
13 that.

14 Q You didn't tell the Police that on
15 February 13, 1980?

16 A No.

17 MS. LUSK: May I have just a moment, Judge?

18 THE COURT: Yes.

19

20 BY MS. LUSK:

21

22 Q Mr. Moss, is that a one-story home or
23 a two-story?

24 A One.

1192

1 MS. LUSK: That's all I have.

2 THE COURT: Any re-direct?

3 MR. BICKLEY: Yes, your Honor.

4

5

6 RE-DIRECT EXAMINATION

7

8 BY MR. BICKLEY:

9

10 Q Mr. Moss, would it be fair to say that
11 yours and John's routine was every day?

12 A Yes.

13 Q Would it also be fair to say that if he
14 had broken that routine, you would probably have
15 remembered it?

16 A Yes.

17 MR. BICKLEY: I have no further questions.

18

19 RE-CROSS-EXAMINATION

20

21 BY MS. LUSK:

22

23 Q Isn't it also true, Mr. Moss, that the
24 first time you were called upon or even asked about your

Moss - Re-Cross

1193

1 routine was in 1984?

2 A In '84 -- I'm not sure of the date.

3 Q The first time that anybody asked you
4 what your routine was in 1979, was in 1984?

5 A I'm not sure of the dates, ma'am.

6 MS. LUSK: That's all I have.

7 MR. BICKLEY: No further questions, your Honor.

8 THE COURT: Mr. Moss, you may step down, sir.

9 May he be excused?

10 MR. BICKLEY: Yes.

11

12 WHEREUPON, Mr. Willie James Moss was excused.

13

14 THE COURT: Okay. Would you step right over
15 here, sir?

16

17 WHEREUPON, John Moss, Jr., father of the
18 defendant, was duly sworn, and upon his oath, deposed as
19 follows:

20

21

22 DIRECT EXAMINATION

23

24 BY MR. BICKLEY:

Moss, John - Direct

1194

1 Q Mr. Moss, are you any relation to the
2 gentleman who is sitting there in the maroon coat?

3 A That's my son, John, III.

4 Q Now, Mr. Moss, I want to -- did I ask
5 you to provide a picture of John when he was about
6 seventeen or eighteen years old?

7 A Yes.

8 Q Do you have that picture?

9 A Yes, I do.

10 Q At what age is the picture there that
11 John is?

12 A This is when he was seventeen.

13 Q And this is a picture of John when he
14 was seventeen?

15 A Yes.

16 MS. LUSK: Your Honor, may we approach the bench?

17 THE COURT: Yes.

18

19 WHEREUPON, a bench conference was held, and the
20 following transpired:

21

22 MS. LUSK: Your Honor, it's our position that Mr.
23 Bickley is trying to show that he was a scrawny little
24 runt, for some reason. I think that we should be

Moss, John - Direct 1195

1 permitted to get into the fact that within four weeks of
2 this murder, he raped a woman in Cleveland, Ohio. He was
3 absolutely ----

4 MR. BICKLEY: That's absolutely ludicrous.

5 THE COURT: What are you offering this for?

6 MR. BICKLEY: To show that that's a different
7 John Moss than the one sitting here now.

8 THE COURT: Different in what respect?

9 MR. BICKLEY: His physical size.

10 THE COURT: You can't tell that from this
11 picture; can you?

12 You can put it in.

13 MR. BICKLEY: Well, she can't put that in, what
14 she's talking about; can she?

15 THE COURT: Not yet. Let's see how much trouble
16 you get in.

17 MR. BICKLEY: All I want to do is put it in to
18 show the difference between John Moss then and now, and
19 also how young he was.

20 THE COURT: You can do that, and you won't get
21 into any trouble.

22 MR. BICKLEY: That's all I want to do with this.
23 But she can't bring that other stuff up?

24 MS. LUSK: No?

Moss, John - Direct

1196

1 THE COURT: No.

2 MR. REVERCOMB: I don't think you ought to be
3 able to show -- to publish that until later.

4

5 WHEREUPON, the bench conference was concluded.

6 (Back on the Record)

7

8 BY MR. BICKLEY:

9

10 Q This is a picture of John Moss when he
11 was seventeen?

12 A Right.

13 MR. BICKLEY: Judge, I'd like to have this marked
14 as Defendant's Exhibit No. 1.

15

16 BY MR. BICKLEY:

17

18 Q Did there come a time, approximately
19 October 28th or 29th, that State Troopers came and got
20 some cameras from you?

21 A Yes, they did.

22 Q And I will show you what has been
23 identified as State's Exhibit 102, and State's Exhibit
24 119 -- are these similar to the cameras that they got

Moss, John - Direct

1197

1 from you; those two?

2 A They were taken from my home, yes.

3 Q Those two?

4 A Yes.

5 Q Now, did you have any other cameras in
6 your home at the time?

7 A Yes.

8 Q What kind of cameras did you have?

9 A The same kind. My daughter had a
10 camera and John had a camera. She also had a camera that
11 a neighbor had given her.

12 Q She had your neighbor's camera?

13 A Yes.

14 Q A camera of this make?

15 A Yes.

16 Q So, at the time, on October 28th, you
17 say that there were what, four cameras in your home?

18 A Yes.

19 Q And would you identify them again,
20 please, who owned those cameras?

21 A My son, John, had one. I had one, and
22 my daughter had two -- one of her own, and one of a
23 neighbor's.

24 Q So, which camera did your son have?

Moss, John - Direct

1198

1 A That's been a while ago. I think it's
2 one of these (Indicating).

3 Q The one with the handle?

4 MR. REVERCOMB: I object to his leading, your
5 Honor.

6 THE COURT: I'll allow it.

7

8 BY MR. BICKLEY:

9

10 Q Was it a Kodak?

11 A It was a Kodak.

12 MR. REVERCOMB: Your Honor, I'd like the record
13 to reflect that Mr. Moss indicated one of two cameras
14 closest to him.

15 THE COURT: I'm sure the jury saw that.

16

17 BY MR. BICKLEY:

18

19 Q Mr. Moss, just to set the record
20 straight, would you pick up the camera which you believe
21 belonged to your son?

22

23 WHEREUPON, the witness picked up a camera and
24 held it up for the jury to see.

Moss, John - Direct

1199

1 THE COURT: Does that have a red sticker with a
2 number on it, Mr. Moss?

3 THE DEFENDANT: Unintelligible.

4 MR. REVERCOMB: Your Honor, did he say what
5 number was on it?

6 THE COURT: He said he didn't see a number on it.

7 MS. LUSK: It's on the bottom.

8

9 BY MR. BICKLEY:

10

11 Q How can you tell that that's the camera
12 that belonged to your son? Or are you saying that this
13 camera belonged to your son?

14 MS. LUSK: Objection.

15 THE COURT: That's two questions. You can only
16 ask one at a time.

17

18 BY MR. BICKLEY:

19

20 Q Are you certain that that's the camera
21 that belonged to your son?

22 A I know he had a camera, but I can't
23 remember exactly which one now.

24 Q Did he have any pictures that was ever

Moss, John - Direct

1200

1 taken with the camera?

2 A My daughter has pictures that was taken
3 with the camera.

4 Q Your daughter has pictures that were
5 taken with the camera?

6 A Yes.

7 Q Did you bring any of those pictures
8 with you?

9 A Yes, I did.

10 Q Could I see a picture, please?

11 A This is a picture that was taken with
12 John's camera (Indicating). And this one (Indicating)
13 was taken with my daughter's.

14 MR. REVERCOMB: Objection to what the daughter's
15 says.

16 THE COURT: Sustained.

17 MR. REVERCOMB: Would you please tell the jury to
18 disregard that?

19 THE COURT: Jurors, I have sustained the State's
20 objection because the witness can't testify to what
21 someone else said, or he can testify to it, but you can't
22 pay attention to it.

23 MR. BICKLEY: Just a minute, your Honor.

24